

GAO Highlights

Highlights of GAO-15-500, a report to congressional requesters

Why GAO Did This Study

EPA formulates rules to protect the environment and public health. To enhance the quality and credibility of such rules, EPA obtains advice and recommendations from the SAB and CASAC—two federal advisory committees that review the scientific and technical basis for EPA decision-making. ERDDAA requires the SAB to provide both the EPA Administrator and designated congressional committees with scientific advice as requested. Amendments to the Clean Air Act established CASAC to, among other things, provide advice to the Administrator on NAAQS.

GAO was asked to look into how the SAB and CASAC are fulfilling their statutory obligations in providing such advice. This report examines (1) the extent to which EPA procedures for processing congressional requests to the SAB ensure compliance with ERDDAA; (2) the extent to which CASAC has provided advice related to NAAQS; and (3) policies EPA has to ensure that the SAB and CASAC maintain their independence when performing their work. GAO reviewed relevant federal regulations and agency documents, and interviewed EPA, SAB, and other relevant officials.

What GAO Recommends

GAO recommends that to better ensure compliance with ERDDAA, EPA take steps to improve its procedures for processing congressional committee requests to the SAB for advice. EPA agreed with GAO's recommendations.

View GAO-15-500. For more information, contact J. Alfredo Gómez at (202) 512-3841 or gomezj@gao.gov.

June 2015

EPA'S SCIENCE ADVISORY BOARD

Improved Procedures Needed to Process Congressional Requests for Scientific Advice

What GAO Found

The Environmental Protection Agency's (EPA) procedures for processing congressional requests for scientific advice from the Science Advisory Board (SAB) do not ensure compliance with the Environmental Research, Development, and Demonstration Authorization Act of 1978 (ERDDAA) because these procedures are incomplete. For example, they do not clearly outline how the EPA Administrator, the SAB staff office, and others are to handle a congressional committee's request. While the procedures reflect EPA's responsibility to exercise general management controls over the SAB and all its federal advisory committees under the Federal Advisory Committee Act (FACA), including keeping such committees free from outside influence, they do not fully account for the specific access that designated congressional committees have to the SAB under ERDDAA. For example, EPA's policy documents do not establish how EPA will determine which questions would be taken up by the SAB. EPA officials told GAO that in responding to congressional requests, EPA follows the same process that it would apply to internal requests for questions to the SAB, including considering whether the questions are science or policy driven or are important to science and the agency. However, under ERDDAA, the SAB is required to provide requested scientific advice to select committees, regardless of EPA's judgment. By clearly documenting how to handle congressional requests received under ERDDAA consistent with federal standards of internal control, EPA can provide reasonable assurance that its staff process responses consistently and in accordance with the law.

The Clean Air Scientific Advisory Committee (CASAC) has provided certain types of advice related to the review of national ambient air quality standards (NAAQS), but has not provided others. Under the Clean Air Act, CASAC is to review air quality criteria and existing NAAQS every 5 years and advise EPA of any adverse public health, welfare, social, economic, or energy effects that may result from various strategies for attainment and maintenance of NAAQS. An EPA official stated that CASAC has carried out its role in reviewing the air quality criteria and the NAAQS, but CASAC has never provided advice on adverse social, economic, or energy effects related to NAAQS because EPA has never asked CASAC to do so. In a June 2014 letter to the EPA Administrator, CASAC indicated it would review such effects at the agency's request.

EPA has policies and guidance to help ensure that its federal advisory committees—including the SAB and CASAC—maintain their independence from the agency when the advisory committees perform their work. Under General Services Administration regulations for implementing FACA, an agency must develop procedures to ensure that its federal advisory committees are independent from the agency when rendering judgments. EPA policies and guidance to help ensure the independence of its federal advisory committees include guidance specifically for the SAB and general requirements that apply to all of EPA's federal advisory committees, including the SAB and CASAC. For example, EPA's Scientific Integrity Policy states that EPA prohibits managers and other agency leadership from intimidating or coercing scientists to alter scientific data, findings or professional opinions, or inappropriately influencing scientific advisory boards.

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Abbreviations

CASAC	Clean Air Scientific Advisory Committee
DFO	Designated Federal Officer
EPA	Environmental Protection Agency
ERDDAA	Environmental Research, Development, and Demonstration Authorization Act of 1978
FACA	Federal Advisory Committee Act
NAAQS	National Ambient Air Quality Standards
OCIR	Office of Congressional and Intergovernmental Relations
SAB	Science Advisory Board

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June 4, 2015

The Honorable James M. Inhofe
Chairman
Committee on Environment and Public Works
United States Senate

The Honorable Lamar Smith
Chairman
Committee on Science, Space, and Technology
House of Representatives

The Environmental Protection Agency (EPA) uses scientific studies and methodologies when formulating rules to protect the environment and public health. EPA seeks to enhance the quality and credibility of such rules by obtaining reviews from experts of the underlying studies and methodologies. For example, EPA requests and obtains advice and recommendations from the Science Advisory Board (SAB) and the Clean Air Scientific Advisory Committee (CASAC). The Environmental Research, Development, and Demonstration Authorization Act of 1978 (ERDDAA) mandated that EPA establish the SAB and required the SAB to provide the EPA Administrator with scientific advice as requested. In 1980, Congress amended ERDDAA by adding a provision requiring the SAB to also provide scientific advice to designated congressional committees when requested.¹ CASAC was established pursuant to amendments to the Clean Air Act in 1977 to, among other things, provide advice to the Administrator with regard to EPA's National Ambient Air Quality Standards (NAAQS). The Clean Air Act requires EPA to set and periodically review and revise NAAQS for certain air pollutants, the emission of which cause or contribute to air pollution that may endanger public health or welfare.

The SAB and CASAC are both federal advisory committees and therefore must comply with the Federal Advisory Committee Act (FACA) and its

¹These designated committees currently include the Senate Committee on Environment and Public Works; the House Committee on Science, Space, and Technology; the House Committee on Energy and Commerce; and the House Committee on Transportation and Infrastructure.

implementing regulations.² For example, the SAB and CASAC are required to operate in accordance with charters.³ In addition, EPA must have procedures to ensure that the advice or recommendations of its federal advisory committees, including the SAB and CASAC, are products of their independent judgment and not “inappropriately” influenced by EPA.⁴ The SAB consists of the Board, standing and ad hoc committees, panels, and workgroups. CASAC also has subcommittees and panels. The EPA Administrator appoints members to the SAB (and its standing committees) and CASAC, and the SAB staff director appoints consultants to the SAB ad hoc committees, panels, and workgroups and CASAC subcommittees and panels.⁵ The SAB staff office, among other things, oversees the selection and formation of SAB and CASAC panels and work groups and processes EPA requests for scientific and technical advice.⁶ The SAB, its staff office, and CASAC report directly to the EPA Administrator.

Recent interactions between the House Committee on Science, Space, and Technology and the SAB related to specific SAB reviews on hydraulic fracturing and water body connectivity have raised questions with the Committee regarding whether the SAB is fulfilling its statutory obligations

²FACA governs the establishment, operation, and termination of advisory committees within the executive branch of the federal government. The General Services Administration (GSA) prepares regulations on federal advisory committees to be prescribed by the GSA Administrator and issues other administrative guidelines and management controls for advisory committees.

³Charters must be filed with EPA and the congressional committees with legislative jurisdiction over the agency. The purpose of the advisory committee charter is to specify the committee's mission or charge and general operational characteristics.

⁴41 C.F.R. § 102-3.105(g) (2014).

⁵SAB ad hoc committees, panels, and workgroups and CASAC subcommittees and panels include both members and consultants and are established for limited periods to provide advice on specific matters where the Board or standing committee members do not have all the requisite expertise.

⁶The SAB staff office is staffed by EPA employees and is responsible for two of EPA's 20 FACA committees—the SAB and CASAC. The SAB staff office publishes a Federal Register Notice announcing opportunities for the public to nominate candidate experts to serve on the SAB, certain SAB standing committees, and CASAC.

to provide scientific advice to the designated congressional committees.⁷ In addition, recent testimony received by the Committee has raised questions regarding whether CASAC is carrying out its statutory obligations to advise EPA of any adverse public health, welfare, social, economic, or energy effects that may result from various strategies for attainment and maintenance of NAAQS.

You asked us to review how the SAB and CASAC are fulfilling their statutory obligations in providing scientific advice. This report examines (1) the extent to which EPA procedures for processing congressional committees' requests for scientific advice from the SAB ensure compliance with ERDDAA; (2) the extent to which CASAC has provided advice related to NAAQS; and (3) policies, if any, EPA has to ensure the SAB and CASAC maintain their independence from the agency when performing their work.

To examine the extent to which EPA procedures for processing congressional committees' requests for scientific advice from the SAB ensure compliance with ERDDAA, we reviewed ERDDAA and its legislative history, the SAB's charters, legal cases involving the SAB, and EPA documents to determine how requests to the SAB from congressional committees were addressed. We also interviewed officials from the SAB staff office, EPA's Office of General Counsel, and EPA's Office of Congressional and Intergovernmental Relations (OCIR). To examine the extent to which CASAC has provided advice related to NAAQS, we reviewed the Clean Air Act, its legislative history, and legal cases involving the act. We also interviewed SAB staff office and EPA Office of General Counsel officials. To examine what policies, if any, EPA has to ensure the SAB and CASAC maintain their independence from the agency when performing their work, we reviewed and analyzed FACA, the General Services Administration's (GSA) regulations for implementing FACA, and EPA documents. We interviewed officials from the SAB staff office about written policies concerning FACA's requirements about independence. We also interviewed officials from GSA to discuss the

⁷Hydraulic fracturing is a process used in natural gas wells where millions of gallons of water, sand, and chemicals are pumped underground to break apart the rock and release the gas. Water body connectivity is the biological, chemical, and hydrologic connectivity of waters and the effects that small streams, wetlands, and open waters have on larger downstream waters such as rivers, lakes, estuaries, and oceans.

agency's regulations requiring federal agencies to develop procedures to ensure the independence of their federal advisory committees.

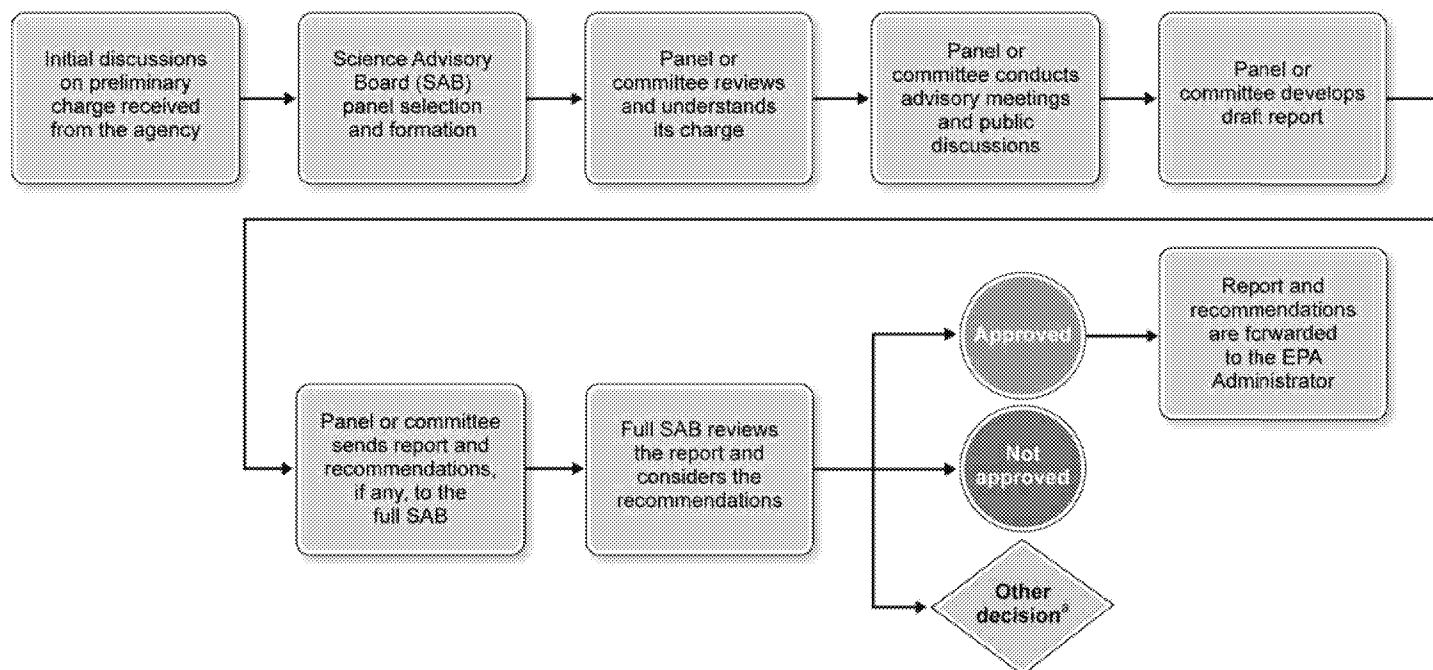
We conducted this performance audit from June 2014 to June 2015, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

The SAB provides a mechanism for EPA to receive peer review and other advice in the use of science at EPA. The SAB is authorized to, among other things, review the adequacy of the scientific and technical basis of EPA's proposed regulations. The SAB and its subcommittees or panels focus on a formal set of charge questions on environmental science received from the agency.⁸ Depending on the nature of the agency's request, the entire advisory process generally takes 4 to 12 months from the initial discussion on charge questions with EPA offices and regions to the delivery of the final SAB report. Figure 1 depicts the stages of the SAB advisory process.

⁸The charge guides, but need not limit, the deliberations of the committee or panel.

Figure 1: The SAB Advisory Process



Source: GAO analysis of EPA documents. | GAO-15-500

^aIn addition to approving or not approving a report and recommendations, the full SAB has other options it can take, such as making revisions to the draft report or sending the draft report back to the authoring panel or committee for further work.

CASAC provides independent advice to EPA on “air quality criteria.”⁹ Under the Clean Air Act as amended, CASAC is to review the criteria and the existing NAAQS every 5 years and make recommendations to EPA for new standards and revisions of existing standards, as appropriate. In addition, CASAC is directed to advise EPA of the areas in which additional knowledge is required to appraise the adequacy and basis of the NAAQS and describe the research efforts necessary to provide the required information. CASAC also is directed to advise EPA of the relative contribution to air pollution of concentrations of natural as well as human

⁹Under the Clean Air Act, air quality criteria must accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare, which may be expected from the presence of certain air pollutants in the ambient air.

activity, and any adverse public health, welfare, social, economic, or energy effects that may result from various strategies for attainment and maintenance of the NAAQS. CASAC's advisory process is similar to the SAB's process, including the option of establishing subcommittees and panels that send their reports and recommendations to CASAC.

As federal advisory committees, the SAB and CASAC are subject to FACA, which broadly requires balance, independence, and transparency. FACA was enacted, in part, out of concern that certain special interests had too much influence over federal agency decision makers. The head of each agency that uses federal advisory committees is responsible for exercising certain controls over those advisory committees. For example, the agency head is responsible for establishing administrative guidelines and management controls that apply to all of the agency's advisory committees, and for appointing a Designated Federal Officer (DFO) for each advisory committee. Advisory committee meetings may not occur in the absence of the DFO, who is also responsible for calling meetings, approving meeting agendas, and adjourning meetings.¹⁰ As required by FACA, the SAB and CASAC operate under charters that include information on their objectives, scope of activities, and the officials to whom they report. Federal advisory committee charters must be renewed every 2 years, but they can be revised before they are due for renewal in consultation with GSA.

In addition to being subject to FACA, the SAB is subject to ERDDAA, which requires the SAB not only to provide advice to its host agency but also to designated congressional committees. (There is no similar statutory provision that allows congressional committees to request or receive scientific advice from CASAC). Specifically, in 1980, Congress amended ERDDAA by adding a provision requiring the SAB to provide scientific advice to designated congressional committees when requested.¹¹ According to SAB staff office officials, since that time, the SAB has responded to general congressional questions and concerns. However, in 2013, representatives of a congressional committee formally

¹⁰A DFO is required by FACA to chair or sit in attendance of each advisory committee meeting and is authorized to adjourn any such meeting whenever he/she determines it to be in the public interest. FACA also requires that no advisory committee shall conduct any meeting in the absence of that officer or employee.

¹¹An analysis of changes in the SAB's charter regarding to whom the SAB is to provide advice is included in appendix I.

requested advice from the SAB regarding two reviews the SAB was conducting. According to EPA officials, this was the first time representatives of a congressional committee formally requested advice from the SAB. Both requests were addressed and submitted directly to the SAB Chair and the Chair of the relevant SAB panel and sent concurrently to the SAB staff office and EPA Administrator.¹² While ERDDAA does not outline a role for EPA in mediating responses from the SAB to the designated congressional committees, EPA identifies such a role for itself under FACA. Specifically, EPA points to the DFO's responsibility to manage the agenda of an advisory committee. Also under FACA, EPA is responsible for issuing and implementing controls applicable to its advisory committees. Responses to the committee's requests for scientific advice were handled by the SAB staff office and EPA's Office of Congressional and Intergovernmental Relations (OCIR). The SAB staff office and, later, OCIR responded to the committee's first request for advice, and OCIR responded to the committee's second request for advice. See table 1 for more information on these requests.

¹²The first request was copied to EPA's Acting Administrator.

Table 1: Congressional Committee’s Formal Requests for Advice from the Scientific Advisory Board (SAB) and the Environmental Protection Agency’s (EPA) Acknowledgments since 1980

Congressional committee request letter	Nature of request	Agency acknowledgment
May 2, 2013, by Representative Chris Stewart, Subcommittee on Environment, Committee on Science, Space and Technology	The Committee requested that the SAB and its Hydraulic Fracturing Research Advisory Panel consider additional areas for inquiry as it began its examination of EPA’s study of the potential impacts of hydraulic fracturing on drinking water resources. The Committee submitted 14 questions that it wanted the SAB and the panel to answer.	<p>May 31, 2013—The SAB staff office acknowledged the Committee’s letter.</p> <p>The SAB staff office responded to the Committee’s request for advice and provided responses to 3 of the 14 questions outlined in the Committee’s request. The SAB staff office also explained that the SAB would have an opportunity to independently consider the remaining 11 questions. The Committee’s letter was provided to the SAB panel at its meeting on May 7– 8, 2013, and posted on the SAB website.</p> <p>December 11, 2013—EPA’s Office of Congressional and Intergovernmental Relations (OCIR) acknowledged the Committee’s letter.</p> <p>OCIR’s Associate Administrator stated that an Aug. 4, 2011, SAB advisory report on EPA’s draft <i>Plan to Study the Potential Impacts of Hydraulic Fracturing on Drinking Water Resources</i> addressed many of the themes embodied in the remaining 11 questions contained in the House Committee’s request. The Associate Administrator also stated that the Committee’s questions not addressed in the 2011 report would require new research or would be considered once EPA has completed its <i>Draft Hydraulic Fracturing Drinking Water Assessment Report</i>.</p>
November 6, 2013, by Representatives Lamar Smith, Chairman, Committee on Science, Space, and Technology and Chris Stewart, Subcommittee on Environment, Committee on Science, Space and Technology	The Committee requested that the SAB and the SAB panel for the review of EPA’s Water Body Connectivity Report address additional charge questions as part of their review.	<p>December 16, 2013—EPA’s OCIR acknowledged the Committee’s letter.</p> <p>OCIR stated that EPA had begun an initial review of the questions, but that many of the questions were already being addressed under the existing charge questions being reviewed by the SAB panel or “went beyond the scientific review that is the expert technical panel’s statutory focus.”</p>

Source: GAO analysis of EPA documents. | GAO-15-500

EPA's Procedures for Processing Congressional Requests to the SAB Do Not Ensure Compliance with ERDDAA

EPA's procedures for processing congressional requests for scientific advice from the SAB do not ensure compliance with ERDDAA because the procedures are incomplete and do not fully account for the statutory access designated congressional committees have to the SAB. Specifically, EPA policy documents do not clearly outline how the EPA Administrator, the SAB staff office, and members of the SAB panel are to handle a congressional committee's request for advice from the SAB. In addition, EPA policy documents do not acknowledge that the SAB must provide scientific advice when requested by select congressional committees.

EPA's written procedures for processing congressional committee requests to the SAB are found in the SAB charter and in the following two documents that establish general policies for how EPA's federal advisory committees are to interact with outside parties:

- *EPA Policy Regarding Communication Between Members of Federal Advisory Committee Act Committees and Parties Outside of the EPA* (the April 2014 policy), and
- *Clarifying EPA Policy Regarding Communications Between Members of Scientific and Technical Federal Advisory Committees and Outside Parties* (the November 2014 policy clarification).

Collectively, the SAB's charter, EPA's April 2014 policy, and EPA's November 2014 policy clarification provide direction for how EPA and the SAB are to process requests from congressional committees. However, these documents do not clearly outline procedures for the EPA Administrator, the SAB staff office, and members of the SAB panel to use in processing such requests.

At the time of the House committee's two requests to the SAB in 2013, the SAB charter was the only EPA document that contained written policy relating to congressional committee requests under ERDDAA. The SAB charter briefly noted how congressional committees may access SAB advice, stating; "While the SAB reports to the EPA Administrator, congressional committees specified in ERDDAA may ask the *EPA Administrator to have SAB provide advice on a particular issue.*" (GAO italics) Beyond what the charter states, however, no EPA policy specified a process the Administrator should use to have the SAB provide advice and review a congressional request.

In response to a request from the SAB staff office that EPA clarify the procedures for handling congressional committee requests, EPA, through an April 4, 2014, memorandum informed the SAB that committee members themselves and the federal advisory committees as a whole should refrain from directly responding to these external requests. Attached to the memorandum was the April 2014 policy that stated: “if a FACA committee member receives a request relating to the committee’s work from members of Congress or their staff, or congressional committees, the member should notify the DFO, who will refer the request to the EPA OCIR. OCIR will determine the agency’s response to the inquiry, after consulting with the relevant program office and the DFO.” This policy, however, did not provide more specific details on processing requests from congressional committees under ERDDAA.

In November 2014, EPA issued a clarification to the April 2014 policy, specifying that SAB members who receive congressional requests pursuant to ERDDAA should acknowledge receipt of the request and indicate that EPA will provide a response. The November 2014 policy clarification does not identify the SAB as having to provide the response. The November 2014 policy clarification also stated that the request should be forwarded to the appropriate DFO and that decisions on who and how best to respond to the requests would be made by EPA on a case-by-case basis. While the November 2014 policy clarification provides greater specificity about processing requests, it is not consistent with the SAB charter because the policy indicates that congressional committee requests should be handled through the DFO, whereas the charter indicates that they should be handled through the EPA Administrator and provides no further information. A senior-level EPA official stated that the agency considered that the charter and the November 2014 policy clarification differed in the level of detail, but not in the broad principle that the agency is the point of contact for congressional requests to the SAB (and SAB responses to those requests). However, under the federal standards of internal control,¹³ agencies are to clearly document internal controls, and the documentation is to appear in management directives, administrative policies, or operating manuals. While EPA has documented its policies, they are not clear, because the charter and the November 2014 policy

¹³GAO, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington, D.C.: November 1999).

clarification are not consistent about which office should process congressional requests. Agency officials said that the SAB charter is up for renewal in 2015. By modifying the charter when it is renewed to reflect the language in the November 2014 policy clarification—that congressional requests should be forwarded to the appropriate DFO—EPA can better ensure that its staff process congressional committee requests consistently when the agency receives such a request.

Moreover, neither the April 2014 policy nor the November 2014 policy clarification clearly documents EPA's procedures for reviewing congressional committee requests to determine which questions would be taken up by the SAB consistent with the federal standards of internal control. Because EPA's procedures for reviewing congressional committee requests are not documented, it will be difficult for EPA to provide reasonable assurance that its staff are appropriately applying criteria when determining which questions the SAB will address. EPA officials told us that internal deliberations in response to a congressional request follow those that the agency would apply to internal requests for charges to the SAB. Specifically, officials told us that EPA considers whether the questions are science or policy driven, whether they are important to science and the agency, and whether the SAB has already undertaken a similar review. In addition, under ERDDAA, the SAB is required to provide requested scientific advice to select committees, regardless of EPA's judgment. As EPA has not fully responded to the committee's two 2013 requests to the SAB, by clearly documenting its procedures for reviewing congressional requests to determine which questions should be taken up by the SAB and criteria for evaluating requests, the agency can provide reasonable assurance that its staff process these and other congressional committee requests consistently and in accordance with both FACA and ERDDAA.

Furthermore, the charter states that when scientific advice is requested by one of the committees specified in ERDDAA, the Administrator will, when appropriate, forward the SAB's advice to the requesting congressional committee. Neither the charter nor the April 2014 policy and November 2014 policy clarification specify when it would be "appropriate" for the EPA Administrator to forward the SAB's advice to the requesting committee. Such specificity would be consistent with federal standards of internal control that call for clearly documenting internal controls. Without such specification, the perception could be created that EPA is withholding information from Congress that the SAB is required to provide under ERDDAA. EPA officials stated that the EPA Administrator does not attempt to determine whether advice of the SAB contained in

written reports should be forwarded to the requesting committee and that all written reports are publically available on the SAB website at the same time the report is sent to the EPA Administrator. By modifying the charter or other policy documents to reflect when it is and when it is not appropriate for the EPA Administrator to forward the advice to the requesting committee, EPA can better ensure transparency in its process.

In general, under FACA, as a federal advisory committee, the SAB's agenda is controlled by its host agency, EPA.¹⁴ As such, the SAB generally responds only to charge questions put to it by EPA although, under ERDDAA, the SAB is specifically charged with providing advice to its host agency as well as to designated congressional committees. In addition, it is EPA's responsibility under GSA regulations for implementing FACA to ensure that advisory committee members and staff understand agency-specific statutes and regulations that may affect them,¹⁵ but nothing in the SAB charter, the April 2014 policy, or the November 2014 policy clarification communicates that, ultimately, SAB must provide scientific advice when requested by congressional committees. For example, we found no mechanism in EPA policy for the SAB to respond on its own initiative to a congressional committee request for scientific advice unrelated to an existing EPA charge question. A written policy for how the SAB should respond to a congressional committee request that does not overlap with charge questions from EPA would be consistent with federal internal control standards. Moreover, such a policy would better position the SAB to provide the advice it is obligated to provide under ERDDAA and for EPA to provide direction consistent with GSA regulations for implementing FACA.

¹⁴An advisory committee under FACA is a committee "established or utilized by" a federal agency for the purpose of obtaining advice or recommendations. 5 U.S.C. App. 2 § 3(2) (2015). The term "utilized" means "under the actual management or control of the agency." See, e.g. *Town of Marshfield v. F.A.A.* 552 F.3d 1, 6 (1st Cir. 2008).

¹⁵41 C.F.R. § 102-3.125(c) (2014).

CASAC Has Provided Certain Types of Advice Related to Air Quality Standards

CASAC has provided certain types of advice related to the review of NAAQS. The Clean Air Act requires CASAC to review air quality criteria and existing NAAQS every 5 years and advise EPA of any adverse public health, welfare, social, economic, or energy effects that may result from various strategies for attainment and maintenance of NAAQS.¹⁶

According to a senior-level EPA official, CASAC has carried out its role in reviewing the air quality criteria and the NAAQS, but has never provided advice on adverse social, economic, or energy effects related to NAAQS because to date EPA has not asked CASAC to do so. This is in part because NAAQS are to be based on public health and welfare criteria, so information on the social, economic, or energy effects of NAAQS are not specifically relevant to setting NAAQS.

In a June 2014 letter to the EPA Administrator, CASAC indicated that, at the agency's request, it would review the impacts (e.g., the economic or energy impacts) of strategies for attaining or maintaining the NAAQS but stressed that such a review would be separate from reviews of the scientific bases of NAAQS.¹⁷ In response to such a request, the letter stated that an ad hoc CASAC panel would be formed to obtain the full expertise necessary to conduct such a review.

¹⁶42 U.S.C. §§ 7409(d)(2)(B), (d)(2)(C)(iv) (2015).

¹⁷A senior-level EPA official stated that EPA continues to examine this issue and is considering how to proceed. Information from EPA-requested reviews could be useful for the states, which implement the strategies necessary to achieve the NAAQS. EPA is required to provide states, after consultation with appropriate advisory committees, with information on air pollution control techniques, including the cost to implement such techniques. 42 U.S.C. § 7408(b)(1) (2015). According to a senior-level EPA official, EPA collects this information from other federal advisory committees, the National Academy of Sciences, and state air agencies, among others, and EPA fulfills its statutory obligation by issuing Control Techniques Guidelines and other implementation guidance.

EPA Has Policies and Guidance to Ensure That the SAB and CASAC Maintain Their Independence from the Agency

EPA has policies and guidance to help ensure that its federal advisory committees maintain their independence from the agency when performing their work.¹⁸ Under GSA regulations for implementing FACA, agencies must develop procedures to ensure that the federal advisory committees are independent from the agency when rendering judgments.¹⁹ EPA policies and guidance to help ensure the independence of its federal advisory committees include general discussions of FACA requirements that apply to all of EPA's federal advisory committees as well as those specifically for the SAB.²⁰ For example, the April 2014 Policy refers to the agency's responsibilities under FACA to maintain its separation from its federal advisory committees. In addition, EPA's Scientific Integrity Policy sets out the expectation that all agency employees, including scientists, managers and political appointees, will ensure, among other things, that the agency's scientific work is of the highest quality and free from political interference or personal motivations.²¹ This policy states that EPA prohibits managers and other agency leadership from intimidating or coercing scientists to alter scientific data, findings, or professional opinions or to inappropriately influence scientific advisory boards. The agency has also developed the *EPA Peer Review Handbook* to provide guidance to EPA staff and managers who are planning to conduct peer reviews.²² The handbook

¹⁸Independence is defined here as freedom from institutional or ideological bias regarding the issues under review. U.S. Environmental Protection Agency, *Peer Review Handbook*, 3rd Edition.

¹⁹41 C.F.R. §102-3.105(g) (2014). The form that these procedures should take (e.g., whether as guidance or policies and amount of detail) is not defined in the regulations and, according to GSA officials, it is up to the discretion of each agency.

²⁰We did not review the adequacy of these policies and procedures or those currently in place to ensure the independence and balance of specific SAB members or panelists. We have previously reported issues with the policies and procedures associated with the independence of individual SAB members. In June 2001, we recommended to EPA that the SAB develop policies and procedures that better identify and mitigate potential conflicts of interest and support the development of balanced panels. See GAO, *EPA's Science Advisory Board Panels: Improved Policies and Procedures Needed to Ensure Independence and Balance*, GAO 01-536 (Washington, D.C.: June 12, 2001). The agency implemented a number of new procedures in response to this report's recommendations.

²¹The U.S. EPA Scientific Integrity Policy provides a framework intended to ensure scientific integrity throughout EPA and promote, among other things, scientific and ethical standards and the use of peer review and advisory committees.

²²The goal of peer review is to obtain an independent, third party review of a product from experts who have not substantially contributed to its development as a product.

includes information on planning and conducting a peer review as well as the types of peer reviews performed by external peer reviewers, such as federal advisory committees. Specifically, the handbook provides information on the independence aspects of a peer review, such as how closely EPA officials should interact with peer reviewers when a review is being conducted to maintain independence.

The SAB staff office has also developed documents that contain some references to how the SAB and CASAC can maintain their independence from EPA. Specifically, the SAB Office developed a handbook for SAB members that includes a section on how SAB members should expect to maintain their independence.²³ For example, the handbook states that SAB committee and panel members are expected to avoid interaction with anyone—including agency representatives or members of the interested public—who might create a perception of conflict of interest. The SAB handbook also has a section on the role of the agency during the SAB's report preparation phase. This section states that the agency should not in any way approve or attempt to influence the content of draft panel or committee reports. In addition, EPA officials explained that the agency does not review or comment on drafts of SAB or CASAC products, so that it cannot influence them in their final form. Finally, the SAB office, as part of a fiscal year 2012 list of initiatives to enhance public involvement in SAB and CASAC activities included a statement that the SAB office and federal advisory committees would not accept a charge from EPA that unduly narrows the scope of an advisory activity.

Conclusions

EPA's SAB plays an important role assisting the agency in using high-quality science by providing EPA with scientific advice on a wide range of matters and reviewing scientific research the agency uses when developing environmental regulations. Under ERDDAA, the SAB is also required to provide scientific advice to designated congressional committees when requested. In November 2014, EPA issued a clarification revising its policy for how it processes congressional

²³According to EPA officials, the SAB staff office supports both the SAB and CASAC, so the same processes and procedures are applied to both. The handbook notes in the introduction that although the handbook refers to the chartered SAB and its committees and panels, many of the processes and procedures also are relevant to the CASAC. New members of CASAC and its panels are provided a copy of the handbook.

committees' requests for scientific advice from the SAB. However, shortcomings exist with EPA's policy documents.

First, the November 2014 policy clarification differs from the SAB's charter regarding which offices should receive and process congressional requests. As a result, EPA staff may not process congressional committee requests consistently, since the treatment will vary depending on whether staff follow the policy clarification or the charter. Agency officials said that the SAB charter is up for renewal in 2015. By modifying the charter when it is renewed to reflect the language in the November 2014 policy clarification, that congressional requests should be forwarded to the appropriate DFO, EPA can better ensure that its staff process congressional committee requests consistently when the agency receives them.

Additionally, EPA has not documented its procedures for reviewing congressional committee requests to determine which questions should be taken up by the SAB or criteria for evaluating those requests. By documenting the agency's procedures and criteria, EPA can provide reasonable assurance that its staff handle congressional requests consistently and in accordance with both FACA and ERDDAA.

Furthermore, the SAB's charter states that the Administrator will forward the SAB's response to a committee's request when appropriate, but EPA has not specified in policy documents when it would be appropriate for the Administrator to forward the SAB's advice to the requesting committee. Without such specification, the perception could be created that EPA is withholding information from Congress that the SAB is required to provide under ERDDAA. By clarifying procedures to reflect when it is and when it may not be appropriate for the Administrator to forward the advice to the requesting committee, EPA can better ensure transparency in its process and consistency with ERDDAA.

Finally, it is EPA's responsibility to ensure that advisory committee members and staff understand agency-specific statutes and regulations that may affect them under regulations for implementing FACA. However, EPA policy documents do not specify how the SAB would respond on its own initiative to a congressional committee's request for scientific advice unrelated to an existing EPA charge question, as it must do under ERDDAA. By documenting procedures on how the SAB should respond to a congressional committee request that does not overlap with charge questions from EPA, the agency would better position the SAB to provide

the advice it is obligated to provide under ERDDAA and EPA itself to provide direction consistent with regulations for implementing FACA.

Recommendations for Executive Action

To better ensure compliance with ERDDAA when handling congressional requests for scientific advice from EPA's SAB, we recommend that the EPA Administrator take the following four actions:

- Clarify in the charter when it is renewed which offices should receive and process congressional requests.
- Document procedures for reviewing congressional committee requests to determine which questions should be taken up by the SAB and criteria for evaluating such requests.
- Clarify in policy documents when it is and when it is not appropriate for the EPA Administrator to forward advice to the requesting committee.
- Specify in policy documents how the SAB should respond to a congressional committee's request for scientific advice unrelated to an existing EPA charge question.

Agency Comments

We provided EPA with a draft of this report for review and comment. In written comments, reproduced in appendix II, EPA stated that it concurred with the recommendations in the report and provided information on planned actions to address each recommendation. EPA also provided technical comments, which we incorporated as appropriate.

We are sending copies of this report to the appropriate congressional committees, the EPA Administrator, and other interested parties. In addition, this report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff members have any questions about this report, please contact me at (202) 512-3841 or gomezj@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made contributions to this report are listed in appendix III.

A handwritten signature in black ink, reading "Alfredo Gómez". The signature is written in a cursive style with a large, stylized "G" for Gómez.

J. Alfredo Gómez
Director, Natural Resources and Environment

Appendix I: Changes to the Science Advisory Board Charter

The Environmental Research, Development, and Demonstration Authorization Act of 1978 (ERDDAA) mandated that EPA establish the SAB and required the SAB to provide the EPA Administrator with scientific advice as requested. Congress amended ERDDAA in 1980 to require EPA's SAB to provide scientific advice to designated congressional committees when requested. Below is our analysis of the changes to the charter regarding to whom the SAB is to provide advice.

In 1978, the Charter Objectives and Responsibilities stated that: "The objective of the Board is to provide advice to EPA's Administrator on the scientific and technical aspects of environmental problems and issues. The Board reports to the Administrator. It will review issues, provide independent advice on EPA's major programs, and will perform special assignments as requested by the Agency and as required by the ERDDAA of 1978 and the CAA Amendments of 1977." In response to the ERDDAA amendments, EPA changed the charter in 1981 to reflect that certain congressional committees could also request advice. Additional changes to the charter over the years regarding to whom the SAB is to provide advice are reflected in the table below.

Table 2: EPA Science Advisory Board (SAB) Charter Changes Regarding to Whom the SAB Is to Provide Advice, 1981–2013

Year of charter	Charter's objectives and responsibilities (changes underlined and italicized)
1981	The objective of the Board is to provide advice to EPA's Administrator on the scientific and technical aspects of environmental problems and issues. <i>While the Board reports to the administrator, it may also be requested to provide advice to the U.S. Senate Committee on Environment and Public Works or the U.S. House Committees on Science and Technology, Interstate and Foreign Commerce, or Public Works and Transportation.</i>
1983	Same as above.
1985	Similar to above. <i>House Committee name changed to Committees on Science and Technology, Energy and Commerce, or Public Works and Transportation</i>
1987	Same as above.
1989	Same as above.
1991	The objective of the Board is to provide <i>independent</i> advice to EPA's Administrator on the scientific and technical aspects of environmental problems and issues. While the Board reports to the Administrator, it may also be requested to provide advice to the U.S. Senate Committee on Environment and Public Works or the U.S. House Committees on Science and Technology, Energy and Commerce, or Public Works and Transportation.
1993	Same as above.
1995	The objective of the Board is to provide independent advice and <i>peer review</i> to EPA's Administrator on the scientific and technical aspects of environmental problems and issues. While the Board reports to the Administrator, it may also be requested to provide advice to <i>U.S. Senate Committees and Subcommittees and U.S. House Committees and Subcommittees, as appropriate.</i>
1997	Same as above.
1999	Same as above.

Appendix I: Changes to the Science Advisory
Board Charter

Year of charter	Charter's objectives and responsibilities (changes underlined and italicized)
2001	Same as above.
2003	The objective of the Board is to provide independent advice and peer review to EPA's Administrator on the scientific and technical aspects of environmental problems and issues. While the SAB reports to the EPA Administrator, certain congressional committees <i>may ask the EPA Administrator to have the SAB provide advice on a particular issue.</i>
2005	Same as above.
2007	The objective of the Board is to provide independent advice and peer review to EPA's Administrator on the scientific and technical aspects of environmental problems and issues. While the SAB reports to the EPA Administrator, certain congressional committees may ask the EPA Administrator to have the SAB <i>address a particular issue.</i>
2009	Same as above.
2011	Same as above.
2013	The objective of the Board is to provide independent advice and peer review to EPA's Administrator on the scientific and technical aspects of environmental problems and issues. While the SAB reports to the EPA Administrator, congressional committees <i>specified in ERDDAA</i> may ask the EPA Administrator to have the SAB provide <i>scientific advice</i> on a particular issue.

Source: GAO analysis of EPA documents. | GAO-15-500

Appendix II: Comments from the Environmental Protection Agency



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D.C. 20460

OFFICE OF THE ADMINISTRATOR

MAY 22 2015

J. Alfredo Gomez
Director
Natural Resources and Environment
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Gomez:

Thank you for the work of you and your staff on GAO engagement code 361573 regarding the EPA Science Advisory Board (SAB) and the Clean Air Scientific Advisory Committee (CASAC). The SAB, established in 1978 pursuant to the Environmental Research, Development and Demonstration Authorization Act (ERDDAA), and the CASAC, established pursuant to the Clean Air Act, are valued sources of independent, expert scientific and technical advice to the agency.

As noted in the draft report, ERDDAA contains a unique provision that discusses requests for scientific advice from certain congressional committees. During our discussions with GAO regarding the report, the EPA raised the potential for a Constitutionally-based separation of powers concern should that provision of ERDDAA be read as allowing congressional committees to unilaterally direct the expenditure of agency funds for the benefit of Congress wholly outside of the appropriations process. The agency explained, however, that the provision can be read to allow the agency to establish procedures for agency consideration of requests for action from these committees that both respects the unique role given to the committees by ERDDAA and avoids that Constitutional concern.

We are pleased that the GAO's report, as evidenced in the recommendations, recognizes that the agency is authorized to establish procedures for the review and processing of congressional requests for scientific advice from the SAB, including "procedures for reviewing congressional committee requests to determine which questions should be taken up by the SAB and criteria for evaluating such requests." The agency agrees with those recommendations, and will move to establish procedures for agency review and processing of such requests. Summary agency responses to each of the GAO recommendations are provided below.

GAO Recommendation 1. Clarify in the charter when it is renewed which offices should receive and process congressional requests.

Agency Response: The SAB charter currently notes that congressional committees specified in ERDDAA may ask the EPA Administrator to have the SAB provide scientific advice on a particular issue. The agency will clarify the process by which congressional requests will be received and addressed, either by including additional detail in the SAB charter or by developing additional written procedures as envisioned in the recommendations below.

GAO Recommendation 2. Document procedures for reviewing congressional committee requests to determine which questions should be taken up by the SAB and criteria for evaluating such requests.

Agency Response: The agency will develop additional written procedures for evaluating congressional committee requests for advice from the SAB, including criteria to guide the evaluation of such requests by the agency and the SAB.

GAO Recommendation 3. Clarify in policy documents when it is and when it is not appropriate for the EPA Administrator to forward advice to the requesting committee.

Agency Response: SAB advice to the EPA Administrator is provided in the form of written letters and reports, all of which are available to the public on the SAB website. When SAB letters and reports are prepared in response to a request from congressional committees specified in ERDDAA, the letters and reports will be posted to the SAB website and the agency also will forward the written SAB advice to those committees.

GAO Recommendation 4. Specify in policy documents how the SAB should respond to a congressional committee request for scientific advice unrelated to an existing EPA charge question.

Agency Response: As noted in response to Recommendation 2, the agency will develop additional written procedures for evaluating congressional committee requests for advice from the SAB, including criteria to guide the evaluation of such requests by the agency and the SAB.

Sincerely,



John E. Reeder
Deputy Chief of Staff

cc: Christopher Zarba, Director
SAB Staff Office

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

J. Alfredo Gómez, (202) 512-3841 or gomezj@gao.gov

Staff Acknowledgments

In addition to the individual named above, Vincent Price and Janet Frisch, Assistant Directors; Ulana Bihun; Antoinette Capaccio; Greg Carroll; and John Delicath made key contributions to this report.

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June 8, 2017

The Honorable Lisa Murkowski
Chairman
The Honorable Tom Udall
Ranking Member
Subcommittee on Interior, Environment, and Related Agencies
Committee on Appropriations
United States Senate

The Honorable Ken Calvert
Chairman
The Honorable Betty McCollum
Ranking Member
Subcommittee on Interior, Environment, and Related Agencies
Committee on Appropriations
House of Representatives

EPA Science Advisory Board: Policy Statement on Science Quality and Integrity

In formulating rules to protect the environment and public health, the Environmental Protection Agency (EPA) relies on advice from scientific and technical experts. EPA's Science Advisory Board (SAB) is one source of scientific and technical advice for EPA. The SAB consists of about 45 independent experts in the fields of science, engineering, economics, and other social sciences and is overseen by the SAB Staff Office, which is staffed by EPA employees. As a federal advisory committee, the SAB must comply with the Federal Advisory Committee Act (FACA).¹ Among other things, FACA requires that EPA establish uniform administrative guidelines and management controls for its advisory committees.

An explanatory statement accompanying the Consolidated Appropriations Act, 2016 directed EPA to develop an updated policy statement on science quality and integrity for the SAB.² According to the explanatory statement, the policy statement should include (1) goals on increasing membership from states and tribes; (2) an evaluation of potential bias, if EPA's Administrator decides that financial-related metrics are appropriate to identify conflicts of interest or bias; and (3) direction on treating public comments. The explanatory statement also directed EPA to submit a draft of the policy statement to GAO for review and included a provision for GAO to review the updated policy statement and determine whether the updated policy met the intent of the explanatory statement. The deadline for EPA's submission to us was March 17, 2016.

¹Pub. L. No. 92-463, 86 Stat. 770 (Oct. 6, 1972), codified, as amended, at 5 U.S.C. app. 2.

²The explanatory statement noted that EPA had "not yet resolved long-standing questions regarding conflicts of interest that have spanned multiple Administrations." 161 Cong. Rec. H10220 (daily ed. Dec. 17, 2015) (explanatory statement submitted by Representative Hal Rogers regarding House Amendment #1 to the Senate Amendment on H.R. 2029, later enacted as Pub. L. No. 114-113, 129 Stat. 2242 (2015)).

For this report, we assessed whether EPA drafted an updated policy statement that addressed the directives in the explanatory statement. To do this, we reviewed EPA documents and interviewed EPA officials, including SAB Staff Office officials. We conducted this performance audit from January 2017 to June 2017, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

EPA's Response Did Not Address All Congressional Directives

EPA did not update its policies or requirements for the SAB in response to the direction in the explanatory statement, nor did it specifically address all of the directives in the statement. Instead, EPA developed a draft document that describes how the SAB Staff Office implements existing policies and procedures, according to the letter accompanying this document and SAB Staff Office officials we interviewed.³ Moreover, the letter accompanying the draft document was dated September 30, 2016—more than 6 months after the deadline for EPA to submit the draft policy statement and updated policies to us for review.

Our review of the draft document noted the following:

- The draft document states that EPA has policies to ensure that advisory committees operate in accordance with (1) FACA and its implementing regulations, (2) statutes and regulations regarding ethics requirements for members of advisory committees and panels, and (3) other relevant EPA policies, including the Scientific Integrity Policy and the Peer Review Policy.⁴
- According to the draft document, EPA addresses SAB scientific quality and integrity issues—such as independence and objectivity, committee composition and balance, and freedom from financial conflicts of interest—through its Scientific Integrity Policy, Peer Review Policy, Peer Review Handbook, and the Office of Management and Budget Peer Review Bulletin.⁵

SAB Staff Office officials we interviewed stated that to develop the draft document, EPA synthesized the policies and procedures that it has developed and continuously updated in

³Environmental Protection Agency, *Ensuring the Scientific Quality and Integrity of SAB and CASAC Advisory Processes*, Draft Document (Sept. 8, 2016).

⁴Environmental Protection Agency, *Scientific Integrity Policy* (February 2012), accessed March 16, 2017, https://www.epa.gov/sites/production/files/2014-02/documents/scientific_integrity_policy_2012.pdf; and Environmental Protection Agency, *Peer Review and Peer Involvement at the U.S. Environmental Protection Agency* (Jan. 31, 2006), accessed April 20, 2017, https://www.epa.gov/sites/production/files/2015-01/documents/peer_review_policy_and_memo.pdf. In January 2017, EPA published corrections to the *Scientific Integrity Policy*; see Environmental Protection Agency, *Supplemental Information for the U.S. Environmental Protection Agency's Scientific Integrity Policy* (January 2017), accessed April 14, 2017, https://www.epa.gov/sites/production/files/2017-01/documents/fy2017_scientific_integrity_policy_supplemental_information_0.pdf.

⁵Environmental Protection Agency, Science and Technology Policy Council, *Peer Review Handbook*, 4th Ed., EPA/100/B-15/001 (Washington, D.C.: October 2015) and Office of Management and Budget, *Final Information Quality Bulletin for Peer Review* (Dec. 15, 2004).

response to FACA, implementing regulations, SAB Staff Office guidance, and stakeholder feedback. According to these officials, EPA has made numerous updates to its policies and procedures to enhance the openness, transparency, and balance of SAB reviews. The officials stated that these updates include larger, more diverse review panels; increased opportunities for public input; and outreach to industry and other groups to ensure greater participation.⁶

With regard to the specific directives in the explanatory statement, we noted the following:

- With regard to the first directive in the explanatory statement, the draft document does not include specific or numeric goals on increasing membership from states and tribes. However, it states that the SAB Staff Office is committed to expanding the diversity of scientific perspectives on the SAB, including the perspectives of scientists from state and local governments, tribes, industry, and nongovernmental organizations. According to SAB Staff Office officials, while they seek to increase the participation of state scientists, they often receive few applications from these scientists and, therefore, meeting a numeric goal could be challenging.
- With regard to the second directive in the explanatory statement, the draft document does not discuss whether EPA's Administrator made a decision about the appropriateness of updating financial-related metrics for identifying conflicts of interest or bias. SAB Staff Office officials told us that this is because they rely on the existing legal and policy framework—including FACA requirements and Office of Government Ethics regulations—as appropriate financial metrics for identifying conflicts of interest or bias.⁷
- With regard to the third directive in the explanatory statement, the draft document refers to but does not update the practices for considering and responding to public comments that are included in the Peer Review Handbook and the SAB handbook.⁸

In conclusion, while EPA developed a draft document that describes how the SAB Staff Office implements existing policies and procedures, as well as describes past actions to update and improve these policies and procedures, EPA did not update its policies or requirements for the SAB as directed by the explanatory statement. We are not making a recommendation at this time, because EPA has not yet finalized its policy statement. However, as EPA moves forward, we encourage it to specifically address the directives provided in the explanatory statement.

Agency Comments and Our Evaluation

We provided a draft of this report to EPA for review and comment. In its written comments, reproduced in enclosure I, EPA stated that its draft document synthesized its policies and procedures to evaluate conflict of interest committee composition and balance, qualitative goals to increase state and tribal membership, and eligibility requirements for service on the SAB to ensure fairness and objectivity. In addition, EPA stated that it has and will continue to update its policies and procedures to enhance the openness, transparency, and balance of its membership. While we recognize that EPA's draft document synthesized its existing policies

⁶We did not review the composition of SAB panels for changes in diversity or other levels of participation.

⁷The Office of Government Ethics provides overall leadership and oversight of the executive branch ethics program designed to prevent and resolve conflicts of interest.

⁸Environmental Protection Agency, *Serving on the EPA Science Advisory Board: A Handbook for Members and Consultants*, EPA-SABSO-12-001 (March 2012).

and procedures, as well as describing past actions to update and improve these policies and procedures, EPA did not update its policies or requirements for the SAB as directed by the explanatory statement. Therefore, as EPA moves forward, we continue to encourage the agency to specifically address the directives provided in the explanatory statement.

We are sending copies of this report to the appropriate congressional committees, the EPA Administrator, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff members have any questions about this report, please contact me at (202) 512-3841 or gomezj@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are Janet Frisch (Assistant Director), Antoinette Capaccio, Chad M. Gorman, and Richard Johnson.

A handwritten signature in black ink, reading "Alfredo Gómez". The signature is written in a cursive, flowing style.

J. Alfredo Gómez
Director, Natural Resources and Environment

Enclosure – 1

Enclosure I: Comments from the Environmental Protection Agency



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

May 18, 2017

J. Alfredo Gomez
Director, Natural Resources and Environment
U.S. Government Accountability Office
331 G Street, NW
Washington, DC 20548

OFFICE OF THE
ADMINISTRATOR

Dear Mr. Gomez:

Thank you for the work of you and your staff on GAO engagement code 101351 regarding the Consolidated Appropriations Act, 2016 directing the EPA Administrator to develop a policy statement on science quality and integrity for the Science Advisory Board (SAB) and all Board members.

As you may know, EPA developed the draft policy document entitled *Ensuring the Scientific Quality and Integrity of SAB and CASAC Advisory Processes* in response to the explanatory statement. EPA synthesized its policies and procedures to evaluate conflict of interest committee composition and balance, qualitative goals to increase State and tribal membership, and eligibility requirements for service on the SAB to ensure fairness and objectivity.

As we move forward under the new Administration, there will be a concerted effort to assure diversity and to look for additional ways to strengthen scientific review at EPA. Already that process is underway. The Agency is committed to diversity of scientific perspectives on the SAB to the maximum extent possible, including the perspectives of scientists from state and local governments, tribes, industry, and nongovernmental organizations, while maintaining foremost attention to essential scientific expertise. EPA has and will continue to update its policies and procedures to enhance the openness, transparency and balance of its membership. EPA has adopted and will continue to adopt new practices to improve accessibility and responsiveness to the public.

While the draft proposed GAO report does not provide specific recommendations, it does encourage the EPA to address directives provided in the explanatory statement. The agency has responded to recommendations in previous reports to improve policies in this regard and the SAB Staff Office will continue advancing and improving procedures to assure the independence, integrity and quality of the scientific and technical advice the SAB provides to the Administrator.

Sincerely,

John E. Reeder
Deputy Chief of Staff

cc: Christopher Zarba, Director
SAB Staff Office

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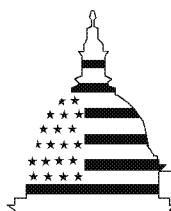
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April 2004

FEDERAL ADVISORY COMMITTEES

Additional Guidance Could Help Agencies Better Ensure Independence and Balance



G A O

Accountability * Integrity * Reliability



Highlights of GAO-04-328, a report to congressional requesters

Why GAO Did This Study

Because advisory committees are established to advise federal decision makers on significant national issues, it is essential that their membership be, and be perceived as being, free from conflicts of interest and balanced as a whole. GAO was asked to (1) describe the role of federal advisory committees in the development of national policies, (2) examine the extent to which existing guidance and policies and procedures for evaluating committee members for conflicts of interest and points of view ensure independent members and balanced committees, and (3) identify practices and measures that could help ensure independence and balance.

What GAO Recommends

GAO recommends that GSA and/or OGE, as appropriate, give direction to agencies on: the proper use of representative appointments; information that would help ensure committees are, and are perceived as, balanced; and practices that would better ensure independence and balance and enhance transparency in the advisory committee process. GSA agreed with GAO's findings and agreed to work with OGE to implement the recommendations. OGE agreed that representative appointments need review but disagreed that its guidance has limitations. GAO continues to believe the guidance could be improved to better ensure that agencies are appropriately appointing committee members.

www.gao.gov/cgi-bin/gettrpt?GAO-04-328.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Robin Nazzaro at (202) 512-3841 or NazzaroR@gao.gov.

FEDERAL ADVISORY COMMITTEES

Additional Guidance Could Help Agencies Better Ensure Independence and Balance

What GAO Found

Federal advisory committees play an important role in shaping public policy by providing advice on a wide array of issues, such as stem cell research, drinking water standards, space exploration, drug approvals, and federal land management. About 950 advisory committees perform peer reviews of scientific research; offer advice on policy issues; identify long-range issues; and evaluate grant proposals, among other functions.

Additional governmentwide guidance could help agencies better ensure the independence of members—that is, that they are free from significant conflicts of interest—and balance of federal advisory committees. For example, current limitations in the Office of Government Ethics' (OGE) guidance are a factor in at least three agencies' continuing a long-standing practice of appointing most or all members as "representatives"—expected to reflect the views of the entity or group they are representing and not subject to conflict-of-interest reviews—even when the agencies call upon the members to provide advice on behalf of the government. Such members would be more appropriately appointed as "special government employees," who are reviewed for conflicts of interest. OGE officials agreed with GAO that these agencies' appointments of some members as representatives of their fields of expertise are not appropriate, and this practice avoids using the special government employee category that was created to help the government hire experts in various fields for such purposes. OGE guidance that representatives may speak for, among others, any recognizable group of persons should be clarified to state that they generally are not to represent an expertise. Also, to be effective, advisory committees must be, and be perceived as being, fairly balanced in terms of points of view and functions to be performed. However, the General Services Administration's (GSA) guidance on advisory committee management does not address what types of information could be helpful to agencies in assessing the points of view of potential committee members, nor do agency procedures identify what information should be collected about potential members to make decisions about committee balance. Consequently, many agencies do not identify and systematically collect and evaluate information pertinent to determining the points of view of potential committee members, such as previous public positions or statements on matters being reviewed.

GAO identified promising practices and measures that can better ensure independence and balance and promote transparency in the federal advisory committee system, such as obtaining nominations from the public and making public information about how members are identified and screened. Wider use of these practices—particularly for committees addressing sensitive or controversial topics—could reduce the likelihood that committees are, or are perceived as being, biased or imbalanced.

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Abbreviations

CDC	Centers for Disease Control and Prevention
CODEX	Codex Alimentarius Commission
CV	curricula vitae
EPA	Environmental Protection Agency
FACA	Federal Advisory Committee Act
FAO	Food and Agriculture Organization
FDA	Food and Drug Administration
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act of 1977
FSIS	Food Safety and Inspection Service
GSA	General Services Administration
HACCP	Hazard Analysis and Critical Control Point
HHS	Department of Health and Human Services
ICCVAM	Interagency Coordinating Committee on the Validation of Alternative Methods
NASA	National Aeronautics and Space Administration
NIEHS	National Institute of Environmental Health Sciences
NIH	National Institutes of Health
OGE	Office of Government Ethics
USDA	United States Department of Agriculture
USGS	United States Geological Survey
WHO	World Health Organization

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United States General Accounting Office
Washington, D.C. 20548

April 16, 2004

The Honorable Eddie Bernice Johnson
Ranking Minority Member, Subcommittee
on Research
Committee on Science
House of Representatives

The Honorable Brian Baird
House of Representatives

Federal advisory committees have been called the “fifth arm of government” because of the significant role they play in advising federal agencies, the Congress, and the President on important national issues.¹ To be effective, these advisory committees must be—and, just as importantly, be perceived as being—independent and balanced. Specifically, individual committee members who provide advice to the government must be free from significant conflicts of interest—that is, they must be “independent.” In addition, while it may be desirable to include experts on committees who have particular viewpoints, federal law requires each committee, as a whole, to be balanced in terms of the points of view and the functions to be performed. Recently, some appointments to scientific and technical advisory committees have generated controversy because of the perception by some scientists and others that these appointments were based on ideology rather than expertise or were weighted to favor one group of stakeholders over others.

In 1962, the Congress established the category of “special government employee” and made the conflict-of-interest rules for such employees less restrictive than for regular federal government employees to overcome obstacles in hiring outside experts for occasional service, such as on federal advisory committees. Members of federal advisory committees are often appointed as special government employees to provide advice on behalf of the government on the basis of their best judgment. In contrast, members may also be appointed to federal advisory committees as “representatives” to provide stakeholder advice—that is, advice reflecting

¹In this view, federal advisory committees follow the executive, legislative, judicial, and regulatory “arms” of government. *Hearings on S. 1637, S. 2064, S. 1964 before the Subcommittee on Intergovernmental Relations of the Senate Committee on Government Operations, 92nd Congress, 1st Sess., pt. 1 at 12 (1971).*

the views of the entity or interest group they are representing, such as industry, labor, or consumers.

Federal advisory committee members who are employees of the federal government must meet federal requirements pertaining to freedom from conflicts of interest—which we refer to in this report as independence—and the committees as a whole must meet requirements pertaining to balance. Federal conflict-of-interest statutes (18 U.S.C. §§ 201), including the principal criminal financial conflict-of-interest statute (18 U.S.C. § 208), apply to regular and, in large part, special government employees. The Office of Government Ethics (OGE) is responsible for developing regulations and guidance for these statutory provisions. The criminal financial conflict-of-interest statute and related OGE regulations prohibit regular and special government employees from participating in a “particular matter”² that may have a direct and predictable effect on their financial interest, unless granted a waiver. Members appointed as representatives who are neither regular nor special government employees are not subject to statutes regarding conflicts of interest. The Federal Advisory Committee Act³ (FACA) requires, among other things, that committee memberships be “fairly balanced in terms of points of view presented and the functions to be performed by the advisory committee.” Courts have interpreted this requirement as providing agencies with broad discretion in balancing their committees. The General Services Administration (GSA) is responsible for developing regulations and guidance regarding the establishment of advisory committees under FACA. In addition to OGE and GSA regulations and guidance, federal agencies have their own policies and procedures to establish and manage advisory committees.

You asked us to examine several issues regarding federal advisory committees. As agreed with your offices, this report (1) describes the role of federal advisory committees in the development of national policies; (2) examines the extent to which governmentwide guidance and agency-specific policies and procedures for evaluating committee members for conflicts of interest and points of view ensure independent members and balanced federal advisory committees; and (3) identifies practices that

²A particular matter is one that involves deliberation, decision, or action that is focused on the interests of specific people or a discrete and identifiable class of people. 5 C.F.R. § 2640.103(a)(1).

³Pub. L. No. 92-463, 86 Stat. 770 (1972) (classified at 5 U.S.C. app. 2).

could better ensure that committees are, and are perceived as being, independent and balanced.

To address these objectives, we reviewed OGE regulations and guidance to federal agencies regarding federal conflict-of-interest provisions and GSA regulations and guidance to federal agencies regarding FACA. We reviewed the policies and procedures at six federal departments and agencies that make extensive use of scientific and technical advisory committees—the Departments of Agriculture (USDA), Energy, Health and Human Services (HHS), and the Interior; the National Aeronautics and Space Administration (NASA); and the Environmental Protection Agency (EPA). Because HHS entities sponsor 26 percent of all federal advisory committees and 36 percent of all scientific and technical advisory committees, we also reviewed the policies and procedures at three HHS agencies that sponsor many advisory committees—the Centers for Disease Control and Prevention (CDC), the Food and Drug Administration (FDA), and the National Institutes of Health (NIH). We reviewed the procedures used by these nine departments and agencies to identify, screen, and appoint members for committees so as to ensure that members are free of conflicts of interest (where conflict-of-interest requirements apply) and that committees are balanced. To better understand how agencies implement OGE and GSA governmentwide regulations and guidance as well as their own policies, we examined the management of one committee at each agency.⁴ We reviewed the confidential financial disclosure forms of the committee members who were appointed as special government employees, along with other information, and discussed with staff how the committees used this information. We did not, however, make any judgments on whether conflicts of interest existed or whether these panels were properly balanced. To identify practices that promote independence and balance, we examined the relevant policies and procedures of the National Academies;⁵ the nine committees and agencies examined in this review; and EPA's Science Advisory Board, which made a number of

⁴We selected a nonprobability sample of nine committees that address scientific and technical issues using criteria described in appendix I. Results from nonprobability samples cannot be used to make inferences about a population because some elements of the population being studied have no chance or an unknown chance of being selected as part of the sample.

⁵The National Academies consist of four private, nonprofit organizations that advise the federal government on scientific and technical matters: the National Academy of Sciences, the National Academy of Engineering, the Institute of Medicine, and the National Research Council.

changes to its policies and procedures in response to our June 2001 report.⁶ We conducted our review from January 2003 through March 2004 in accordance with generally accepted government auditing standards. For more details on the scope and methodology of our review, see appendix I.

Results in Brief

Approximately 950 federal advisory committees with about 62,000 members play an important role in shaping public policy by advising policymakers on a wide array of important and challenging issues. For example, advisory committees provide advice in the form of peer reviews of scientific research that may be used to support health, environmental, and safety regulations; recommendations about specific policy decisions; identification of long-range issues facing the nation; and evaluations of grant proposals, among other functions. Federal advisory committees have been established to work in broad areas of public policy, such as national security, the economy, the environment, and public health. Illustrative of the range of issues addressed by federal advisory committees are the current committees that advise agencies on matters related to AIDS research, food safety, hazardous waste cleanup, trade policy, and homeland security. Advisory committees are sometimes established specifically to address controversial issues about which the government believes it is beneficial to solicit the advice of individuals with the relevant background and/or expertise from outside the government. For example, some of the issues addressed by advisory committees are inherently controversial because they deal with sensitive personal and ideological matters, such as stem cell research and genetic engineering. Other committees address issues that are controversial because of their potential regulatory impact, such as food and drug approvals or environmental regulations.

Additional governmentwide guidance could help agencies better ensure the independence of federal advisory committee members and the balance of federal advisory committees. For example, OGE guidance to federal agencies has shortcomings and does not adequately ensure that agencies appoint individuals selected to provide advice on behalf of the government as special government employees subject to conflict-of-interest regulations. In addition, GSA guidance to federal agencies and agency-specific policies and procedures could be improved to better ensure that

⁶U.S. General Accounting Office, *EPA's Science Advisory Board Panels: Improved Policies and Procedures Needed to Ensure Independence and Balance*, GAO-01-536 (Washington, D.C.: June 12, 2001).

agencies collect and evaluate information that could be helpful in determining the viewpoints of potential committee members regarding the subject matters being considered and in ensuring that committees are, and are perceived as being, balanced. Specifically, we found the following:

- OGE guidance on the appropriate use of representative or special government employee appointments to advisory committees has limitations that we believe are a factor in three of the agencies we reviewed continuing the long-standing practice of essentially appointing all members as representatives. That is, we found that USDA, Energy, and Interior have appointed most or all members to their federal advisory committees as representatives—even in cases where the members are called upon to provide advice on behalf of the government and thus would be more appropriately appointed as special government employees. Because conflict-of-interest reviews are only required for federal or special government employees, agencies do not conduct conflict-of-interest reviews for members appointed as representatives. As a result, the agencies cannot be assured that the real or perceived conflicts of interest of their committee members who provide advice on behalf of the government are identified and appropriately mitigated. Further, allegations that the members have conflicts of interest could call into question the independence of the committee and jeopardize the credibility of the committee's work.
- FACA requires that federal advisory committees be fairly balanced in terms of the points of view and the functions to be performed, and courts have interpreted this requirement as providing agencies with broad discretion in balancing their committees. In addition to the legal requirement for balance, it is important that committees are perceived as balanced in order for their advice to be credible and effective. However, GSA guidance does not address what types of information could be helpful to agencies in assessing the points of view of potential committee members, nor do agency procedures identify what information should be collected about potential members to make decisions about committee balance. Consequently, many agencies do not identify and systematically collect and evaluate information pertinent to determining the points of view of committee members regarding the subject matters being considered. For example, of the nine departments and agencies we reviewed, only EPA consistently (1) collected information on committee members appointed as special government employees that enabled the agency to assess the points of view of the potential members and (2) used this information to help

achieve balance. Without sufficient information about prospective committee members prior to appointment, agencies cannot ensure that their committees are, and are perceived as being, balanced.

We identified several promising practices for forming and managing federal advisory committees that can better ensure that committees are, and are perceived as being, independent and balanced. These practices include (1) obtaining nominations for committees from the public, (2) using clearly defined processes to obtain and review pertinent information on potential members regarding potential conflicts of interest and points of view, and (3) prescreening prospective members using a structured interview. In our view, these measures reflect the principles of FACA by employing clearly defined procedures to promote systematic, consistent, and transparent efforts to achieve independent and balanced committees. Some of the practices, such as seeking public comment on proposed committees, are particularly relevant to those committees addressing sensitive or controversial topics. In addition, we identified selected measures that could promote greater transparency in the federal advisory committee process and improve the public's ability to evaluate whether agencies have complied with conflict-of-interest requirements and FACA requirements for balance, such as providing information on how the members of the committees are identified and screened and indicating whether the committee members are providing independent or stakeholder advice. Implemented effectively, these practices could help agencies avoid the public criticisms to which some committees have been subjected. That is, if more agencies adopted and effectively implemented these practices, they would have greater assurance that their committees are, and are perceived as being, independent and balanced.

Because the effectiveness of competent federal advisory committees can be undermined if the members are, or are perceived as, lacking in independence or if committees as a whole do not appear to be properly balanced, we are making 12 recommendations to GSA and OGE to provide additional guidance to federal agencies. The broad categories of these recommendations include (1) clarifying the appropriate use of representative appointments; (2) systematically obtaining information that could help ensure committees are, in fact and in perception, balanced; and (3) adopting certain practices that can better ensure independent and balanced committees and increase transparency in the federal advisory process. While our report focuses primarily on scientific and technical federal advisory committees, the limitations in guidance and the promising practices we identified pertaining to independence and balance are

pertinent to federal advisory committees in general, and thus our recommendations are directed to GSA and OGE because of their responsibilities for providing guidance to federal agencies on these matters.

GSA reviewed a draft of this report and generally agreed with the findings relating to the areas directly under its purview. The agency committed to, among other things, continuing to work in partnership with OGE to address those areas under OGE's jurisdiction relating to FACA. GSA outlined a proactive approach to responding to the report's recommendations, including making changes to its on-line FACA database. OGE reviewed the draft report and also generally agreed with the problems we identified regarding appointments to federal advisory committees, but the agency disagreed that there are any limitations in its guidance that contribute to the problems and also reiterated the measures that OGE has taken to address this issue (most of which were highlighted in the draft report). OGE believes the agencies making inappropriate appointments are disregarding, rather than misinterpreting, the OGE guidance. While we recognize that there may be other reasons as well, we have identified the limitations in OGE's guidance as one factor in some agencies' continuing the long-standing practice of essentially appointing all committee members as representatives. We believe the effectiveness of OGE's and GSA's efforts to ensure that agencies make appropriate appointment decisions for members of their federal advisory committees will not improve until the limitations we identified in OGE's guidance on appointments are addressed. Our view is also that clear, unambiguous guidance would make it more difficult for agencies to misapply the guidance. GSA's and OGE's written comments are discussed further at the end of this report and their letters are provided in appendixes XII and XIII. Overall, the comments from the agencies whose advisory committee management policies and procedures we reviewed—EPA; Energy; HHS (and component agencies CDC, FDA, and NIH); Interior; NASA; and USDA—were generally positive about the draft report, viewing it as providing helpful information on federal advisory committee management. Four of these agencies also cited some specific concerns about, for example, the requirements for independence and assessing prospective members' points of view. We address these issues at the end of this report and provide the pertinent letters from these four agencies in appendixes XIV through XVII.

Background

In recent years, controversies regarding the federal advisory committee system have included concerns about the appointment of specific

individuals to committees and agency decisions to create or terminate some committees. Although a variety of concerns have been raised, the overarching concern was that ideological bias was influencing the selection of experts for scientific and health advisory panels. Publications such as *Science*, *The Lancet*, and *Chemical and Engineering News* have published editorials and articles containing criticisms of decisions seen as injecting ideology into a committee system that should be nonideological. Further, some current and potential federal advisory committee members reported being asked about their political views in the context of decisions regarding their appointment or reappointment to committees.

A number of recent articles and editorials identified specific concerns about HHS committees that address controversial scientific and technical issues. Observers have alleged that some appointees either were unqualified for the position, had extreme views that were outside the mainstream of scientific thinking, or had personal conflicts of interest that should have disqualified them from serving on particular committees. Further, observers alleged that HHS has replaced large portions of the membership of ongoing committees as a way of obtaining committees that shared the administration's viewpoint about particular issues. Finally, concerns were raised that HHS had terminated some advisory committees with which the administration allegedly had ideological differences and replaced them with committees that had different charters and a largely new membership.

In 2003, the National Academy of Sciences issued a report on organizational issues within NIH that included a discussion of the perceived politicization of the advisory committee appointment process. The report noted that these concerns had recently arisen within the scientific and health advocacy communities and were similar to concerns that were raised in the early 1970s. In response to the most recent concerns, the academy recommended, among other things, that appointments to NIH advisory committees be based solely on a person's scientific or clinical expertise or his or her commitment to and involvement in issues of relevance to the mission of the institute.

Also in 2003, the Center for Science in the Public Interest sent a letter to the director of OGE about its concerns that conflicts of interest were introducing biases into the federal advisory committee process at HHS,

Interior, and other agencies.⁷ The center's letter, signed by 21 individuals, including public health advocates and members of academia, made a number of recommendations to OGE aimed at strengthening independence, transparency, and public trust in the federal advisory committee process. Further, the National Academies is examining the selection of scientists, engineers, and health professionals to federal advisory committees addressing science-based policy or reviewing research proposals. This study stems from its regular review of senior scientific technical appointments in the federal government as well as from concerns that scientists and others have raised to the academies about some federal advisory committee appointments and the appointment practices used by some agencies. A report is planned for November 2004.

The Federal Advisory Committee Act Sets Broad Requirements and Guidelines for Advisory Committees

The Congress enacted FACA in 1972 in response to two principal concerns: (1) that federal advisory committees were proliferating without adequate review, oversight, or accountability and (2) that certain special interests had too much influence over federal agency decision makers. In this act, the Congress articulated certain principles regarding advisory committees, including broad requirements for balance, independence, and transparency. Specifically, as previously discussed, FACA requires that the membership of committees be fairly balanced in terms of points of view and functions to be performed. Further, FACA requires that any legislation or agency action that creates a committee contain provisions to ensure that the advice and recommendations of the committee will be independent and not inappropriately influenced by the appointing authority (the agency) or any special interest. Finally, FACA generally requires that agencies announce committee meetings ahead of time and give notice to interested parties about such meetings. With some exceptions, the meetings are to be open to the public, and agencies are to prepare meeting minutes and make them available to interested parties.⁸

FACA also set broad guidelines for the creation and management of federal advisory committees, most of which are created or authorized by the

⁷The Center for Science in the Public Interest is a consumer advocacy organization that conducts research and advocacy programs on health and nutrition.

⁸The President or head of an agency may determine that a meeting be closed if, for example, the meeting will include discussions of classified information, reviews of proprietary data submitted in support of federal grant applications, or deliberations involving considerations of personal privacy.

Congress. Agencies also establish committees using general statutory authority, and some are created by presidential directives (see app. II). Further, the act requires that all committees have a charter, and that each charter contain specific information, including the committee's scope and objectives, a description of duties, the period of time necessary to carry out its purposes, the estimated operating costs, and the number and frequency of meetings. As required by FACA, the advisory committee charters generally expire at the end of 2 years unless renewed by the agency or by the Congress.⁹ The requirement encourages agencies to periodically reexamine their need for committees.

GSA, through its Committee Management Secretariat, is responsible for prescribing administrative guidelines and management controls applicable to advisory committees governmentwide. However, GSA does not have the authority to approve or deny agency decisions regarding the creation or management of advisory committees. To fulfill its responsibilities, GSA has developed regulations and other guidance to assist agencies in implementing FACA requirements, provides training to agency officials, and was instrumental in creating the Interagency Committee on Federal Advisory Committee Management. GSA also has created and maintains an on-line FACA database (available to the public at www.fido.gov/facadatabase) for which the agencies provide and verify the data, including committee charters, membership rosters, budgets, and in many cases links to committee meeting schedules, minutes, and reports. The database also includes information about a committee's classification (i.e., scientific and technical or national policy issue). According to the database, 208 committees with 7,910 members were classified as scientific and technical committees. In addition, 131 committees with over 41,000 members were classified as grant review committees—a category that also often addresses scientific and technical issues. Appendix II provides data on the classifications of the federal advisory committees in fiscal year 2003.

While the GSA's Committee Management Secretariat provides FACA guidance to federal agencies, each agency also develops its own policies and procedures for following FACA requirements. Under FACA, agency heads are responsible for issuing administrative guidelines and management controls applicable to their agency's advisory committees. Generally, federal agencies have a reasonable amount of discretion with

⁹Several of Interior's committees do not expire because the legislation creating them exempts them from the biennial charter expiration.

regards to creating committees, drafting their charters, establishing their scope and objectives, classifying the committee type, determining what type of advice they are to provide, and appointing members to serve on committees.¹⁰ However, when the Congress authorizes an agency to establish a particular committee or a President establishes a committee, the agency may have less flexibility in establishing and managing the committee because such things as the committee's objectives, the types of expertise and backgrounds of members, and even the type of advice that is to be provided may be specified by the Congress or the President.

Finally, to assist with the management of their federal advisory committees, agency heads are required to appoint a committee management officer to oversee the agency's compliance with FACA requirements, including recordkeeping. Agency heads must also appoint a designated federal official for each committee to oversee the committee's activities. Among other things, the designated federal official must approve or call the meetings of the committee, approve the agendas (except for presidential advisory committees), and attend the meetings.

Criminal Financial Conflict-of-Interest Statute Applies to Some Advisory Committee Members

OGE is responsible for issuing regulations and guidance for agencies to follow in complying with the statutory conflict-of-interest provisions that apply to all federal employees, including special government employees serving on federal advisory committees. A special government employee is statutorily defined as an officer or employee who is retained, designated, appointed, or employed by the government to perform temporary duties, with or without compensation, for not more than 130 days during any period of 365 consecutive days. Many agencies use special government employees, either as advisory committee members or as individual experts or consultants. Special government employees, like regular federal employees, are to provide their own best judgment in a manner that is free from conflicts of interest and without acting as a stakeholder to represent any particular point of view.¹¹ Accordingly, special government employees appointed to federal advisory committees are hired for their expertise and skills and are expected to provide advice on behalf of the government on

¹⁰In response to Executive Order 12838 directing agencies to reduce by at least one-third the number of discretionary committees, the Office of Management and Budget established a maximum number of discretionary advisory committees for each agency.

¹¹Office of Government Ethics Letter to the Chairman of a National Commission, June 24, 1993 (93 x 14).

the basis of their own best judgment. Special government employees are subject to the federal financial conflict-of-interest requirements, although ones that are somewhat less restrictive than those for regular federal government employees.

The criminal financial conflict-of-interest statute (18 U.S.C. § 208) and related OGE regulations prohibit federal employees, including special government employees, from participating in “particular matters” that may have a direct and predictable effect on their financial interests or those interests of a spouse, minor child, or general partner. A particular matter is defined as one involving a deliberation, decision, or action that is focused on the interests of specific people or an identifiable class of people. Special government employees serving on federal advisory committees thus are prohibited from participating when the subjects they consider are particular matters in which the member has a financial interest. However, special government employees serving on federal advisory committees are provided with an exemption that allows them to participate in particular matters that have a direct and predictable effect on their financial interest if the interest arises from their nonfederal employment and the matter will not have a special or distinct effect on the employee or employer other than as part of a class. This exemption does not extend to the committee member’s personal financial and other interests in the matter, such as stock ownership in the employer. If a committee member has a potential financial conflict of interest that is not covered under this or other exemptions, a waiver of the conflict-of-interest provisions may be granted if the appointing official determines that the need for the special government employee’s services outweighs the potential for conflict of interest or that the conflict is not significant. This standard for granting waivers is less stringent than the standard for regular government employees.

The principal tool that agencies use to assess whether nominees or members of advisory committees have conflicts of interest is the OGE Form 450, Executive Branch Confidential Financial Disclosure Report, which special government employees are required to submit annually. The form 450 requests financial information about the committee member and the member’s spouse and dependent children, such as the sources of income and the identification of assets, but it does not request filers to

provide the related dollar amounts, such as salaries.¹² For committees addressing broad or general issues, rather than particular matters, committee members hired as special government employees are still generally required to complete the confidential financial disclosure form.¹³

Agencies appoint ethics officials who are responsible for ensuring agency compliance with the federal conflict-of-interest statutes. OGE conducts periodic audits of agency ethics programs to evaluate their compliance and, as warranted, makes recommendations to agencies to correct deficiencies in their ethics programs.

Under administrative guidance initially developed in the early 1960s, a number of members of federal advisory committees are not hired as special government employees, but are instead appointed as representatives. Members appointed to advisory committees as representatives are expected to represent the views of relevant stakeholders with an interest in the subject of discussion, such as an industry, a union, an environmental organization, or other such entity. That is, representative members are expected to represent a particular and known bias—it is understood that information, opinions, and advice from representatives are to reflect the bias of the particular group that they are appointed to represent.¹⁴ Because these individuals are to represent outside interests, they do not meet the statutory definition of federal employee or special government employee and are therefore not subject to the criminal financial conflict-of-interest statute. According to GSA and OGE officials, reliable governmentwide data on the number of representative members serving on federal advisory committees are not available. However, data that agencies report to OGE on special government employees serving on federal advisory committees and to GSA on the number of federal advisory committee members indicate

¹²Some agencies, such as EPA and FDA, have developed alternative confidential financial disclosure forms that request additional information on activities and affiliations, such as expert legal testimony.

¹³Special government employees who serve in excess of 60 days above a certain salary level, however, must file a public disclosure form.

¹⁴EPA noted in its comments on our draft report that in the case of a small category of advisory committees that EPA uses, known as regulatory negotiation committees, representative members may bind their organization to take a course of action.

that only about 35 percent of the government's federal advisory committee members are appointed as special government employees.¹⁵

Advisory Committees Play an Important Role in the Development of Federal Policies

Generally composed of individuals from outside of the federal government, federal advisory committees play an important role in the development of public policy and government regulations by providing advice to policymakers on a wide array of issues. In fiscal year 2003, 54 agencies sponsored approximately 950 committees with about 62,000 members to provide advice by performing peer reviews of scientific research; developing recommendations on specific policy decisions; identifying long-range issues facing the nation; and evaluating grant proposals, among other functions. Their advice—on issues such as stem cell research, space exploration, trade policy, drinking water standards, and drug approvals—can enhance the quality and credibility of federal decision making.

Advisory committees have been and continue to be involved in issues of great importance to the advancement of knowledge and the development of national policies and regulations. For example, Energy's decision to undertake the Human Genome Project was based in part on the 1987 recommendation of the department's Health and Environmental Research Advisory Committee.¹⁶ As a result, Energy, working with NIH, successfully coordinated the multibillion-dollar research effort that succeeded in identifying all of the genes on every chromosome in the human body and determining their biochemical nature—leading the way to numerous advances in medical science.

Advisory committees provide agencies with advice in a variety of broad areas of federal policy, such as the environment, public health, and the economy. Committees provide agencies with advice about a wide array of

¹⁵The estimate of the percentage of special government employees is based on data that agencies (1) provide to OGE regarding the number of special government employees serving on federal advisory committees and (2) provide on the GSA FACA database on the total number of federal advisory committee members. This estimate does not include advisory committee members serving on NIH "special emphasis panels," which are not standing committees but rather involve one-time reviews of various science and technical funding applications to NIH (grants, cooperative agreement applications, etc.). If these individuals were included in the estimate above, the percentage of advisory committee members appointed as special government employees would be reduced to about 25 percent.

¹⁶This committee is currently called the Biological and Environmental Research Advisory Committee.

specific issues, such as the management of federal lands, the development of alternative sources of energy, guidelines for assessing cancer risks, risk assessments of toxic chemicals, hazardous waste cleanup, the establishment of new standards for food safety, the delivery of health care services, and the effectiveness of new prescription drugs and medical devices. Recently, federal advisory committees were established to help agencies marshal the facts and weigh options in response to new national issues, such as information security and terrorist attacks.

Federal advisory committees are sometimes established specifically to address controversial issues about which the government believes it is necessary to solicit the advice of individuals with the relevant background and/or expertise from outside of the government. Some of the issues addressed by advisory committees are controversial because they touch upon inherently sensitive personal, religious, or ideological matters, such as stem cell research and genetic engineering. Other committees address issues that are controversial because of their potential regulatory impact on industries or consumers, such as in the case of food and drug approvals or environmental regulations.

To address controversial and other important matters, scientific and technical advisory committees—which are the primary focus of this report—play a number of different roles on behalf of agencies. One role of science committees is to advise agencies on how to address a set of particular problems. For example, the Advisory Committee on Foreign Animal and Poultry Diseases gives the Secretary of Agriculture information and advice on measures necessary to prevent and combat such threats as foot-and-mouth disease. The charter also charges the committee with providing advice on the prevention or management of other threats from foreign animal or poultry diseases. Recent recommendations from the committee addressed coordination between USDA and the Department of Homeland Security and support for a national food animal identification work plan.

In 1990, the Congress authorized the creation of the Aquatic Nuisance Species Task Force to, among other things, coordinate federal efforts to address the threats posed by nonnative aquatic plants and animals.¹⁷ The task force operates as a federal advisory committee and is composed of 7

¹⁷The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 codified at 16 U.S.C. §§ 4701-4741.

federal agency representatives and 13 nonfederal members in an ex officio status. It reports to the Departments of the Interior and Commerce. Among the task force's accomplishments are a number of reports and publications on risk assessment, prevention initiatives, and control programs for such nonnative species as the brown tree snake and the green crab.

Some science advisory committees offer advice to agencies on specific regulatory decisions. For example, FDA established science advisory committees that offer advice on the licensing of specific drugs and on the safety and effectiveness of medical devices. These committees play an important role in determining whether drugs and other medical products make it into the marketplace and can therefore have a significant impact on specific manufacturers as well as potential patients and consumers.

Other science advisory committees make recommendations to agencies on strategic planning efforts needed to address long-range issues facing the nation. Existing committees are exploring efforts to chart new directions in research in biology, physics, astronomy, and space exploration, to name just a few. For example, Energy's Basic Energy Sciences Advisory Committee issued a report in February 2003 entitled *Basic Research Needs to Assure a Secure Energy Future*.¹⁸ In that report, the committee stated its belief that a new national energy research program is essential and must be initiated with the intensity and commitment of the Manhattan Project. The report included a lengthy list of proposed research topics.

Advisory committees may be established to provide a peer review function. For example, a peer review group could be asked to review a body of scientific literature and offer its opinion on the adequacy of the scientific data that may be used to support regulatory actions. As an illustration, in 2001, EPA revised its standards for safe levels of arsenic in drinking water using, in part, the analysis and recommendations of two federal advisory committees—the National Drinking Water Advisory Council and the EPA's Science Advisory Board. This revised standard will have a far-reaching effect on both human health and the operation of public drinking water systems. Other peer review groups are asked to judge the merits of proposals submitted to national grant competitions. For example, the

¹⁸*Basic Research Needs to Assure a Secure Energy Future: A Report from the Basic Energy Sciences Advisory Committee*, prepared by Oak Ridge National Laboratory (Oak Ridge, TN: February 2003).

National Science Foundation, NIH, and other agencies use such groups to evaluate proposals submitted for possible funding by academic or clinical researchers covering a wide range of subject matter. After the peer review groups evaluate the proposals, other science advisory committees may make recommendations to the agencies regarding which proposals to fund.

Federal Guidance Could Better Ensure Independence and Balance

OGE and GSA governmentwide guidance and the policies and procedures of the nine departments and agencies we reviewed have limitations that reduce their effectiveness in ensuring that advisory committee members are independent and that advisory committees are, and are perceived as being, balanced. First, with respect to independence, OGE guidance on whether to appoint members to advisory committees as special government employees or representatives—a decision that determines whether an agency conducts a conflict-of-interest review—has limitations that we believe are a factor in three agencies’ continuing their long-standing practice of essentially appointing all members as representatives. We found that USDA, Energy, and Interior appoint all or almost all members to their federal advisory committees as representatives, even when the members are called on to provide advice on behalf of the government on the basis of their best judgment.¹⁹ Because such members are not providing stakeholder advice, they would be more appropriately appointed as special government employees, subject to reviews for conflicts of interest. However, because conflict-of-interest reviews are only required for federal or special government employees, agencies do not conduct conflict-of-interest reviews for members appointed as representatives. As a result, the agencies cannot be assured that the real or perceived conflicts of interest of their committee members’ providing advice on behalf of the government are identified and appropriately mitigated. Further, allegations that the members have conflicts of interest could call into question the independence of the committee and jeopardize the credibility of the committee’s work. Second, with respect to balance, GSA guidance does not address what types of information would be helpful in assessing the points of view of potential committee members with regard to the matters the committees will consider, nor do agency procedures

¹⁹OGE data indicate that some other agencies, such as the Small Business Administration and the Department of Justice, also rely exclusively on representative appointments to federal advisory committees. OGE staff told us the agency did not examine whether representatives appointed to those agencies’ committees provided independent or stakeholder advice.

identify what information the agencies believe should be collected about potential members—an important step that can help agencies ensure committees are, and are perceived as being, balanced. We found that many agencies do not consistently request information that would be helpful in assessing the overall balance of committee members' viewpoints—such as previous public positions the members may have taken on the matters being reviewed. Without adequate policies and procedures, agencies are vulnerable to allegations that committee members have conflicts of interest and that committees are imbalanced. Such allegations may call into question a committee's legitimacy and may jeopardize the work of otherwise credible and competent committees.

Reviews for Conflicts of Interest Are Not Always Performed

Some agencies appoint most or all members to their advisory committees as representatives, rather than as special government employees. However, some of these committee members appointed as representatives are asked to provide agencies with advice on behalf of the government without representing any particular point of view, and thus it appears that the members would be more appropriately appointed as special government employees. Because only regular and special government employees are subject to the conflict-of-interest statutes, agencies do not conduct conflict-of-interest reviews for members appointed as representatives. Some committees thus have members who had they been appointed as special government employees would have undergone reviews for conflicts of interest, but they have not been reviewed for potential conflicts of interest because they were appointed as representatives.

Representative members and special government employees are supposed to serve different functions on advisory committees. In 1962, the Congress established the category of special government employee and amended the federal conflict-of-interest laws to overcome obstacles in hiring outside experts for occasional service. Special government employees are appointed to federal advisory committees to provide advice on behalf of the government on the basis of their best judgment. Representative members, in contrast, are generally considered as those members of advisory committees who are “chosen for committee membership only to present the views of a private interest.”²⁰

²⁰See Office of Legal Counsel, Department of Justice, Applicability of 18 U.S.C. § 219 to Representative Members of Federal Advisory Committees (Sept. 15, 1999).

In 1982, in response to uncertainties regarding when agencies should appoint members to their advisory committees as special government employees or representatives, OGE developed guidance on the appropriate use of these two appointment categories for federal advisory committees.²¹ In this guidance, OGE noted that it disagreed with “an occasional flat assertion” by agencies that advisory committee members are never subject to the federal conflict-of-interest laws. The 1982 guidance, which is still OGE’s principal guidance on this issue,²² states that a “consultant or advisor whose advice is obtained by a department or agency from time to time because of his individual qualifications and who serves in an independent capacity is an officer or employee of the government”—that is, this person is a regular federal employee or a special government employee. In contrast, a consultant or advisor “who is requested to appear before a government department or agency to present the views of a non-governmental organization or group which he represents, or for which he is in a position to speak, does not act as a servant of the government and is not its officer or employee” but is a representative member. The OGE 1982 guidance concludes by noting that if language used in the enabling legislation, executive order, charter, or other pertinent document does not specify whether the members are functioning as special government employees or representatives, it is fair to conclude that the member is a special government employee because this is the usual status of those appointed by agencies to serve the government.

OGE’s most recent guidance that addresses representative appointments to advisory committees is its February 2000 summary of ethical requirements applicable to special government employees. This summary includes a paragraph discussing representative appointments, highlighting the fact that unlike special government employees and other federal employees, representatives are not expected to render disinterested advice to the government but are expected to “represent a particular bias.” This document explains that representatives are described more fully in OGE’s 1982 guidance and also refers readers to two 1993 advisory letters that (1) conclude that representatives can make policy recommendations to the

²¹Memorandum 82 x 22, Members of Federal Advisory Committees and the Conflict-of-Interest Statutes, July 9, 1982.

²²This guidance has been amplified by several other documents in later years including Advisory Letter 93 x 14 to the Chairman of a National Commission, June 24, 1993; Advisory Letter 93 x 30 to the Executive Director of a Federal Commission, October 22, 1993; and Advisory Opinion 00 x 1, Memorandum dated February 15, 2000.

government and (2) explain the difference between the two types of appointment as follows: representatives are asked to represent a particular bias, while special government employees are asked to provide their own best judgment without representing any particular point of view and in a manner that is free from conflict of interest.

In addition to developing the 2000 guidance on special government employees, OGE has taken steps to educate agencies about special government employee and representative appointments by participating in GSA's FACA management course that includes a session on ethics, conflict-of-interest, and financial disclosure issues. According to GSA, this class is conducted five times each year, reaching about 300 advisory committee staff. According to OGE, the ethics training begins with a discussion of the special government employee/representative designation issue. The course material includes a discussion of representatives and also refers readers to OGE's 1982 guidance. Further, OGE provides training at annual ethics conferences for ethics officials in the executive branch.

Despite these efforts, a recent OGE staff study on agency management of federal advisory committees, summarized in a November 2002 memorandum, indicates that some uncertainties about appointments to federal advisory committees may continue to exist. That is, OGE found that four of the seven agencies it reviewed—Energy, Interior, the Commission on Civil Rights, and the Small Business Administration—appointed all, or nearly all, members as representatives.²³ Further, the OGE memorandum expressed concern that these agencies may be purposely designating their committee members as representatives to avoid subjecting them to the financial disclosure statements required for special government employees and may not be conducting conflict-of-interest reviews for some committee members when they should have been conducted. The OGE memorandum concluded that further scrutiny and education about the proper designation of committee appointments was warranted. As a result, at the next annual conference for agency ethics officials in March 2003, OGE included a session, Ethics Management Tools for Your Federal Advisory Committee, which was principally devoted to “designation” issues involving appointments to federal advisory

²³OGE reviewed the management of advisory committees at the Departments of Energy, the Interior, the Army, and Education; the Commission on Civil Rights; the National Endowment for the Arts; and the Small Business Administration.

committees.²⁴ In addition, in May 2003, OGE issued new audit guidelines for its periodic reviews of agency ethics programs that provide for additional focus and review of appointment designations for individuals serving on committees, councils, boards, and commissions. Finally, as previously mentioned, OGE officials conduct a segment on ethics that addresses the appointments of representatives and special government employees during GSA's FACA management course.

Nonetheless, three of the agencies we reviewed—USDA, Energy,²⁵ and Interior—appoint most or all of the members to their federal advisory committees as representatives.²⁶ Upon examining some of the specific committees at these agencies, we found that these agencies appoint members as representatives even when the members are called on to provide advice on behalf of the government on the basis of their best judgment, rather than to represent views of outside organizations. Specifically, USDA, Energy, and Interior have committees comprised entirely of representative members where, on the basis of the agencies' descriptions of the type of advice that the members are to provide, the use of special government employees seems more appropriate, such as in the following cases:

- *USDA's National Advisory Committee for Microbiological Criteria for Foods.*²⁷ According to its charter, the purpose of the committee is to provide impartial, scientific advice to federal food safety agencies on the development of an integrated national system to monitor food safety from farm to final consumption in order to ensure the safety of domestic, imported, and exported foods.

²⁴OGE also addressed the designation issue at a session of its 2004 annual conference.

²⁵In April 2003, Energy's Acting Assistant General Counsel for General Law told us that all but one of the department's committees use only representative members. The one committee that appointed special government employees was the National Nuclear Security Administration Advisory Committee, which was established in June 2001 and expired in June 2003.

²⁶Coincidentally, our review included two of the departments (Energy and Interior) included in OGE's staff study. OGE found that the Small Business Administration and the Commission on Civil Rights also appoint most or all committee members as representatives. OGE data indicate that some other agencies, such as the Departments of Justice and State, also rely primarily on representative appointments to federal advisory committees.

²⁷According to USDA, the committee is cosponsored with HHS, the Department of Defense, and Commerce but is managed by USDA.

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- *Energy's Biological and Environmental Research Advisory Committee.* According to the committee's designated federal official, the department uses the committee to obtain independent scientific advice on Energy's Biological and Environmental Research Program. The committee addresses issues such as genomics, the health effects of low-dose radiation, DNA sequencing, medical sciences, environmental remediation, and climate change research. In addition to reviewing scientific issues, the committee provides advice on long-range research plans and priorities and appropriate levels of funding.
 - *Interior's Scientific Earthquake Studies Advisory Committee.* According to the committee's designated federal official, members are selected to provide their independent advice to the U.S. Geological Survey (USGS) on matters relating to the survey's role in the National Earthquake Hazards Reduction Program, which is a multiagency strategic program to reduce risks to lives and property resulting from earthquakes. The committee is to review the USGS National Earthquake Hazards Reduction Program's roles, goals, and objectives; assess its capabilities and research needs; provide guidance on achieving major objectives; and establish and measure performance goals. (As discussed below, in January 2004, Interior officials determined that the members of this committee should be appointed as special government employees, and the officials said that the committee would not meet again until the appointments as special government employees have been made.)

In contrast, we found that EPA, HHS, and NASA appoint members as special government employees to committees that provide advice on behalf of the government about scientific and technical issues similar to those addressed by the committees discussed above. Consequently, these agencies do evaluate committee members who provide advice on behalf of the government for potential conflicts of interest.

USDA, Energy, and Interior have 30 other committees with about 750 members that are classified as scientific and technical committees.²⁸ In addition, some committees in other categories, such as national policy advisory committees, also address scientific and technology issues—subject matters for which advice on behalf of the government on the basis of members' best judgment, rather than stakeholder advice, is typically

²⁸In total, these agencies have 189 federal advisory committees with 4,517 members.

sought. In speaking with USDA, Energy, and Interior officials about the basis for their decisions to essentially appoint all advisory committee members as representatives, we learned that this practice is long-standing and firmly rooted in agency cultures—that is, it represents the way these agencies have traditionally staffed their federal advisory committees. The agencies we reviewed generally have not developed sufficient policies, procedures, or guidance for their staff to use when determining which type of appointment is appropriate for individual committees. For example, the guidance of some agencies, such as USDA and Interior, does not address the types of appointments that may be made. Others, such as NASA and Energy, recognize in agency policies and procedures that members can be either special government employees or representatives. However, few of the agencies that have policies identifying the types of appointments specify criteria that should be used when deciding whether the members should be appointed as either special government employees or representatives.

In our view, shortcomings in the OGE 1982 guidance regarding members of federal advisory committees and the conflict-of-interest statutes may (1) contribute to the agencies' overreliance on representative appointments to their advisory committees and (2) limit the effectiveness of OGE's and GSA's education efforts on appointments to advisory committees. Specifically, we found the following shortcomings in the 1982 guidance, which OGE cites as its most complete discussion on the use of representative appointments:

- The OGE guidance is overly broad in describing the groups for which representatives may speak. That is, the guidance indicates that representatives may speak for firms or an industry; for labor or agriculture; or for “any other recognizable group of persons including, on occasion the public at large.” We found that Energy, Interior, and USDA appoint some members to their committees on the basis that they represent various scientific or technical fields, such as biology or toxicology. However, appointing individuals as representatives of a broad category of people, such as a field of expertise, appears to generally be more consistent with providing advice on behalf of the government on the basis of the individual's best judgment, rather than acting as a stakeholder to represent the views of a nongovernment entity or group with an interest in the matter. At our exit conference, OGE officials agreed that, generally, it is not appropriate to appoint committee members as representatives on the basis of their expertise. Further, this approach to classifying members does not recognize and

essentially avoids using the special government employee category, which was specifically created to facilitate the government's ability to retain the services of experts in various fields for such purposes as temporary service on federal advisory committees.

- The conclusion section of the OGE guidance implies that when the term “representative” is used in authorizing legislation, or other such documents, members should be classified as representatives, despite the fact that this term may be used for more generic purposes, such as to direct the balance of a committee. The guidance states that the decision to make representative appointments to federal advisory committees can be indicated in enabling legislation, executive orders, committee charters, or other pertinent documents by “the use of words to characterize [committee members] as the representatives of individuals or entities outside the government who have an interest in the subject matter assigned to the committee.” However, the use of some form of the terms “represent” or “representative” in these documents does not always clearly indicate that the members are to be appointed to serve as representatives; sometimes these terms are used to define committee composition or balance. For example, some of the documents use the term “representative” to identify fields of expertise or employment background needed—specifying, that is, the expertise and points of view deemed pertinent. Some of the documents do not state that the representatives identified have an interest in the matter (as the guidance quoted above calls for) or that they are to speak for their organizations; thus the documents using the term “representative” are sometimes ambiguous. Unlike the guidance on identifying committee members appointed as special government employees—“by the use of words to command the members to exercise individual and independent judgment”—the guidance on identifying representative members does not specify the nature of the advice to be provided (e.g., stakeholder advice).
- The OGE guidance states that the fact that someone is appointed to a committee on the recommendation of an outside organization tends to support the conclusion that the person has a representative function. However, a number of committees solicit recommendations from outside organizations when appointing special government employees in order to achieve appropriate balance and expertise on their committees. Thus, the guidance does not take into account a common practice that agencies use to identify potential committee members and

may overemphasize the weight that agencies should give to this factor when determining what constitutes a representative appointment.

Officials at EPA and NASA also said that the OGE guidance on representative appointments is ambiguous in some respects. They believe it would be very helpful for agencies to have clear criteria for representative appointments. Further, the officials said that training on the issue of appointments to advisory committees has limitations. Specifically, the EPA and NASA officials said that, in their view, the FACA management course does not sufficiently clarify when appointments should be made as special government employees and when they should be made as representatives. These officials also noted that the agencies' ethics officials generally are not the ones who make decisions on the appropriate appointment category; rather, appointment type is viewed more as a FACA management issue. Thus, agency officials managing federal advisory committees may look to GSA more than to OGE for clarification on appointment questions. For example, an official at EPA who has served a detail at GSA said that GSA regularly receives calls from agencies with questions about the distinction between the two types of appointments. We believe these circumstances highlight the importance of both the coordination between GSA and OGE to ensure that GSA is prepared to respond to questions about appointments and the GSA FACA management training directed at agency staff who manage federal advisory committees.

Although the FACA management course manual provides useful information on appointments to committees, we identified some limitations in this material as well. For example, the introductory sentence on appointments states that determining the status of an individual serving on a federal advisory committee is "largely a matter of personnel classification and should be coordinated with an agency's personnel office." In our view, this statement minimizes the importance of examining the type of advice that the individual is being asked to provide as a key determinant of the status of an individual (i.e., the type of appointment to be made). In this regard, in December 2003 officials at OGE told us that they have now concluded (1) that agencies should decide at the outset whether the members of each committee are going to be representatives or special government employees and (2) that this decision should be part of the chartering process. In addition, the GSA manual is not clear and unambiguous on the role of representative members, stating that, in general, representative members of advisory committees "serve as representatives of outside entities and *may* [emphasis added] represent the views of a particular industry or group (e.g., labor, agriculture or other

similar group of interests).” In contrast, OGE guidance states that representatives *are* to represent the views of identified entities or groups. Finally, the GSA manual highlights some OGE criteria from its 1982 guidance document that, as discussed above, we believe need clarification.

The consequences of appointing advisory committee members as representatives when they are in fact asked to provide advice on behalf of the government without representing any particular outside entity’s or group’s point of view exposes the relevant committees to potentially serious problems. Because representative members are not subject to reviews for potential conflicts of interest, allegations of conflicts of interest may call into question the integrity of the committee and jeopardize the credibility of the committee’s work.

Some agencies do address the potential conflicts of interest of their representative members to some extent. For example, Interior’s Bureau of Land Management prohibits its advisory committee members from participating in any matter in which they, a spouse, or dependent child have a direct interest and requires the members to disclose any direct or indirect interest in leases, licenses, permits, contracts, or claims and related litigation that involve lands or resources administered by the bureau. However, this policy does not require the representative members to identify any other financial interests. Interior officials also told us that the department has begun inserting standard language into its committee charters briefly stating the ethics obligations of the members, whether they are special government employees or representatives. The charters for committees with representative members will include a statement that “a member may not participate in matters that will directly affect, or appear to affect, the financial interests of the member or the member’s spouse or minor children, unless authorized by the designated federal official.”²⁹

In January 2004, Interior officials also said that the department has begun working with its committee management officers to develop training and distribute materials to heighten committee members’ awareness of applicable ethical obligations and to develop and institute the appropriate screening mechanisms. Similarly, Energy does not require representative

²⁹The charters will also state that compensation from employment does not constitute a financial interest of the member so long as the matter before the committee will not have a special or distinct effect on the member or the member’s employer, other than as part of a class.

members to provide information on their financial interests and affiliations but does tell representative members in letters appointing them to committees that they “are required to recuse themselves from participating in any meeting, study, recommendation, or other committee activity that could have a direct and predictable effect on the companies, organizations, agencies, or entities with which they are associated or in which they have financial interest.” Interior and Energy policies thus rely on committee members’ correctly identifying and voluntarily disclosing such circumstances. In contrast, USDA requires its representative members to provide information about their employment and sources of income in excess of \$10,000 but does not ask for information about other financial assets that may affect impartiality, such as stock holdings. However, if these members should have been, and actually were, appointed as special government employees, none of these approaches would be adequate to ensure that the members did not have conflicts of interest requiring mitigation.

At the start of our review, Interior officials told us that they had begun to review their appointment classifications for their 115 advisory committees as a result of the November 2002 OGE study. The officials noted that many of their committees addressing federal land management issues are not scientific and technical in content and, in their view, are appropriately staffed with representative members. In January 2004, Interior officials acknowledged that it was appropriate to change the nature of some committee members’ appointments upon reexamination of any underlying legislation and the purpose of the committees. The officials said the department has been reviewing the appointments to committees as their charters expire, and that the department has appointed special government employees to a few advisory committees during the past year.³⁰ Regarding the earthquake studies committee discussed above, in January 2004 the department examined the appointments while renewing the charter and determined, on the basis of its review of the committee’s authorizing legislation, that the members of this committee should properly serve as special government employees. This committee has been operating for 2 years with members appointed as representatives. Interior officials said the change in appointments will be reflected in the charter and in the

³⁰The department appointed members of the Flight 93 Advisory Commission and the Jimmy Carter National Historic Site Advisory Commission as special government employees in September 2003 and January 2004, respectively.

pending appointment letters, and the committee will not be active again until these changes are made.

While noting that it now believes the authorizing language for the earthquake committee clearly calls for the appointment of the members as special government employees, the officials said that other committees that address scientific and technical issues specifically call for the appointment of representatives, such as Interior's National Cooperative Geologic Mapping Advisory Committee. This committee, comprised primarily of officials from five federal agencies, is to review and provide advice on a 5-year plan for the geologic mapping program that the Secretary of the Interior is required to prepare. In our view, while the statute calls for the committee to include two representatives from the state geological surveys and one each from "academia" and "the private sector," it does not clearly and unambiguously call for these individuals to be appointed as representative members rather than special government employees. As previously discussed, the term "representative" may be used in a variety of ways and may be used in a more generic manner to describe a committee's composition. The term "representative" does not necessarily indicate that members should be stakeholders speaking for entities with an interest in the matter, nor is it clear in this case that academia or the private sector would have a specific point of view that could be represented. We believe the department could choose to appoint these members as special government employees to obtain their advice, if Interior decided that nonstakeholder advice was appropriate in light of the committee's function. On the other hand, if the department wants to obtain stakeholder advice from the nonfederal committee members regarding the government's 5-year geologic mapping program plan, the representative members should be clearly informed about the specific interest and points of view they are to represent.

On this point, Interior officials acknowledged that their advisory committee members themselves are not always clear on whether they are to provide stakeholder advice or advice on behalf of the government. For example, during our review we learned that this question was raised at the initial meeting of the earthquake committee in 2001, at which point in time the representative members were told that they were charged with providing advice on behalf of the government, guidance indicating that the representative members were to function as special government employees. To be certain that committee members are clear on their roles in the future, Interior officials said that the department has begun to ensure that letters appointing individuals to advisory committees clearly inform

the member of their status as either a special government employee or a representative. Further, if the members are to serve as representatives, they are to be clearly informed of the constituencies they are to represent before the committee. Clearly, this is an important fact to communicate to the committee members.

GSA officials also told us that appointment information is relevant and important to understanding the work of the various committees. The officials agreed that information on the nature of the advice being provided—and, in the case of representative appointments, of the entities or groups represented—that is not currently available to the public would be useful and informative. They further indicated that the GSA FACA database, which is available to the public and which identifies the members of the advisory committees, could be expanded to include, for each committee member, the type of appointment and the entity or group represented.

**Information That Can Help
Agencies Ensure
Committees Are Balanced Is
Not Systematically
Gathered and Evaluated**

Many agencies do not identify and systematically collect and evaluate information that can help them determine the points of view of their potential committee members regarding the subject matters the committees will consider and thus better ensure that committees are, and are perceived as being, balanced. FACA requires that committees be fairly balanced both in terms of the points of view represented and the functions to be performed. Courts have interpreted the FACA requirement for committee balance as providing agencies with broad discretion in balancing their committees. In addition to the legal requirement for balance, it is important that committees are perceived as being balanced in order to be credible and effective. However, GSA guidance does not address what types of information could be helpful to agencies in assessing the points of view of potential committee members, nor do agency procedures identify what information should be collected about potential members to make decisions about committee balance. Many agencies do not identify and systematically collect and evaluate information that would be helpful in determining the points of view of committee members relevant to the subject matters the committees will consider. For example, of the nine departments and agencies we reviewed, only EPA consistently collected information on committee members who were appointed as special government employees in order to assess the points of view of the potential members and used this information to help achieve balance.

Assessing the points of view of individual members is fundamental to ensuring that committees as a whole are, and are perceived as being, fairly balanced in terms of points of view because agencies must first know whether the members have particular viewpoints or whether they may have—or may reasonably be perceived as having—certain biases. For example, only financial interests and affiliations during the prior year are considered pertinent for conflict-of-interest purposes, but financial and other relevant affiliations—extending beyond the 12-month period—may identify a potential bias or point of view that agencies should consider both in selecting individual members and balancing the committees as a whole. Even when a legal conflict of interest does not exist, a committee member may be so closely aligned with a point of view or an organization that his or her ability to provide objective and impartial advice is impaired or appears to be impaired. Such circumstances in which a person’s impartiality may be called into question, sometimes referred to as an “apparent conflict of interest” and a “perceived conflict of interest,” are important for agencies to be aware of because the perception of bias that can harm the reputation of advisory committees is independent of the legal definition of a conflict of interest.³¹ In some cases, however, agencies may find it helpful to include individuals with known biases, perspectives, or affiliations to serve on certain advisory committees in order to ensure that the relevant points of view are considered.³² In these cases, the issue of the overall balance of viewpoints on the committees is heightened in the sense of an agency’s ability to ensure that the committee is balanced with respect to points of view. When agencies are unaware of the viewpoints and biases of its members, they cannot adequately ensure that the committees are, and are perceived as being, balanced as a whole.

³¹Under 5 C.F.R. § 2635.502, impartiality is considered in some cases in conjunction with particular matters. For example, a special government employee should not participate in a particular matter involving a specific party where the employee knows the matter will have a direct and predicable effect on the financial interest of a member of their household and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question their impartiality in the matter, unless the employee has received authorization from an agency designee.

³²For scientific committees, the relevant points of view may be different scientific perspectives.

Agencies typically rely on two sources to collect data about committee members who were appointed as special government employees: curricula vitae (CV) or résumés and the OGE form 450, the confidential financial disclosure form. Agencies generally collect CVs³³ or résumés that may provide some information pertinent to assessing points of view, such as professional affiliations and published articles. Some agencies may also perform Internet searches for background information on candidates. However, these sources vary in content and reliability and may not be sufficient to consistently provide the information needed to assess for points of view.³⁴

The form 450, which does collect specific information in a systematic manner, was developed specifically for reviews for potential financial conflicts of interest. Some of the information on this form, however, also is relevant to assessing the overall balance of viewpoints on a committee. The form 450 requires potential committee members (and returning members at least annually) to provide information on sources of income and assets, liabilities, and outside positions during the prior year and on existing employment agreements or arrangements, such as promises of future employment and leaves of absence.³⁵ The information on income sources, honoraria, and outside positions held during the prior year may be important to assessing for points of view.³⁶ For example, a university professor who is also an official of an environmental advocacy organization may reasonably be viewed by a sponsoring agency and others as representing an environmental rather than an unaligned “academic” perspective. Similarly, a university professor who is also an official of a

³³CVs are most pertinent to assessing expertise, generally providing information on education, employment experience, professional memberships, service on boards or journals, and publications and presentations.

³⁴Typically, members are rotating off committees periodically and thus issues of overall balance need to be revisited whenever membership changes are made. While special government employees serving on advisory committees are required to provide forms 450 at least annually, CVs and résumés may be collected once and not updated over the years that the members serve on the committees.

³⁵Income includes salaries, fees, and honoraria of the individual and his or her spouse and dependent children. Assets producing more than \$200 in income during the prior year also are to be reported, such as rent, interest, dividends, and capital gains. Information is requested on the sources of income and the identification of assets but not on the related dollar amounts.

³⁶Some relevant affiliations would not be identified because the form 450 only requests information covering the immediate prior 12 months.

toxicology institute that receives funding from chemical companies or who provided expert legal testimony for a corporation may reasonably be viewed by a sponsoring agency and others as providing an industry perspective.

Importantly, while the form 450 can provide some pertinent information for assessing points of view, it was neither designed for nor does it provide sufficient information for this purpose. Specifically, as our review of EPA's Science Advisory Board demonstrated,³⁷ the form 450—designed for financial conflict-of-interest reviews—solicits information covering only the prior year and does not request other information relevant to assessing points of view, such as

- previous public statements or positions on the matter being reviewed, including statements in articles, testimony, or speeches;
- positions taken in various legal forums, particularly in providing expert legal testimony, on the matter;
- research conducted on the matter;
- interests of their employers or clients in the matter; and
- sources of funding for research or other activities.

However, such information is helpful to understand the points of view of potential committee members and therefore to assess how an individual member's participation on the committee would affect overall committee balance. For example, it is helpful for agencies to be aware of public pronouncements that candidates have made on matters relevant to their committees so that they can assess how such individuals may be viewed in terms of impartiality. In those instances where an agency selects a member for their expertise who may have a viewpoint that is aligned with an industry or environmental interest, without the information that would reveal the existing viewpoint, the agency would not be aware of whether including a member with a different viewpoint would be beneficial in terms of the public's perception of committee balance.

³⁷GAO-01-536.

In addition, the extent to which a committee member's employment is funded by a grant or grants from the sponsoring agency is a reasonable factor to consider in assessing the member's impartiality in terms of independence from the agency. On this point, the Office of Management and Budget recently highlighted in its proposed rule on peer review procedures that the independence of scientists conducting peer reviews for agencies while at the same time receiving funding from these agencies might be called into question. Similarly, the 2003 report by the National Academies on organizational issues within NIH recommended that a substantial portion of a committee's scientific membership should consist of persons whose primary source of research support is derived from a different NIH center or institute or from outside of NIH in order to achieve sufficient independence from the agency.³⁸ Officials at EPA and FDA told us that they try to avoid appointing to committees members who receive agency grants for work that is related to matters before the committee. In contrast, Energy and NASA officials said it would be difficult for them to find for some committees the scientific and technical experts they need who do not also receive grants from their agencies. We are not suggesting that having grants or contracts with the sponsoring agency should disqualify individuals from serving on federal advisory committees, but rather that agencies should consider the support they provide to potential members since this does present potential issues of independence from the agency.

Agencies generally have even less information to evaluate the viewpoints of their representative members because representatives are not required to complete the form 450. Consequently, agencies generally do not collect information relating to the financial interests of the representative members. Although representatives are not subject to the financial conflict-of-interest rules, their financial interests could affect their viewpoints. An EPA official acknowledged that for some representative committees, it may be important to consider this information, depending on the work of the committees. However, another EPA official expressed a concern that asking representative members—who are not paid for their services—for financial information, such as is obtained from those retained

³⁸National Research Council, Institute of Medicine, the National Academies, *Enhancing the Vitality of the National Institutes of Health: Organizational Change to Meet New Challenges*, 2003.

as special government employees, could have a chilling effect on the willingness of people to serve on advisory committees as representatives.³⁹

Regarding special government employees, we found that although agencies have generally collected forms 450 from these employees, the forms are not always collected in time for them to be of any use in also evaluating the points of view of potential committee members. For example, some agencies, such as NASA and CDC, do not collect the form 450 until the agency has made decisions about appointments. (We recognize that the form 450 was designed to assess for conflicts of interest and that agencies are not required to also use it to assess for points of view; however, as previously discussed, the form nonetheless can provide some valuable information to agencies regarding the viewpoints of an individual.)

Of the nine committees we reviewed, only EPA's Federal Insecticide, Fungicide, and Rodenticide (FIFRA) Scientific Advisory Panel consistently collected information relevant to assessing the points of view of prospective members and considered this information in selecting members for its peer review panels.⁴⁰ Agencies with committees served by special government employees generally collected information from CVs and résumés and on the form 450, which, as discussed above, has limitations in terms of assessing the points of view of committee members. Agencies with representative members either collected only CVs or, in the case of USDA, collected some additional information about sources of income. (See table 1.)

³⁹Special government employees may or may not be paid for their services, depending on the policy of the agency that is sponsoring the committee.

⁴⁰In January 2004, FDA officials said the agency uses a standard form to collect information from potential appointees early in the selection process that provides information similar to what EPA collects. We reviewed the form and its instructions and note that this effort is directed at potential conflicts of interest; it is not clear the extent to which the information is used to balance points of view. Further, FDA officials said they could not provide copies of the forms for the FDA committee we reviewed because the designated federal official had left the agency.

Table 1: Documentation That Agencies Systematically Collected on Potential Members of Selected Committees

Department/Agency	Committee name	Documentation that agencies systematically collected on potential members of selected committees			
		Curriculum vitae or résumé	Conflict-of-interest financial disclosure form		Other data collection instrument
			OGE form 450	Alternative form approved by OGE	
Agriculture/Food Safety and Inspection Service	National Advisory Committee for Microbiological Criteria for Foods ^b	X			USDA form AD-755 ^a
Energy	Biological and Environmental Research Advisory Committee ^b	X			
Environmental Protection Agency	Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel	X		X ^c	Structured telephone interview
Health and Human Services	Secretary's Advisory Committee on Human Research Protection	X	X		
Health and Human Services/Centers for Disease Control and Prevention	Advisory Committee on Childhood Lead Poisoning Prevention	X	X		
Health and Human Services/Food and Drug Administration	Food Advisory Committee	X	X	X ^d	Structured telephone interview ^e
Health and Human Services/National Institutes of Health	Scientific Advisory Committee on Alternative Toxicological Methods	X	X		
Interior/U.S. Geological Survey	Scientific Earthquake Studies Advisory Committee ^b	X			
National Aeronautics and Space Administration	Space Science Advisory Committee	X ^f	X ^f		

Sources: Data collected from agencies' committee management offices, designated federal officials, or other agency officials responsible for nominating members of committees.

^aUSDA requires members of its advisory committees to file a USDA form AD-755. This form requests information on the individual's primary employment, sources of income over \$10,000, and other matters related to the individual's background in agriculture.

^bMembers were appointed as representatives not subject to conflict-of-interest reviews.

^cThe EPA FIFRA Scientific Advisory Panel uses the EPA form 3110-48 in lieu of the OGE form 450. The EPA form requests more detailed information from members about their affiliations and association with the work of the committee.

^dFDA requires members of its Food Advisory Committee to file a form 450 during the appointment process. However, if the Food Advisory Committee, or any other FDA advisory committee, plans to discuss "particular matters" of specific applicability, the agency will require members to file an FDA form 3410 prior to the meeting. The form 3410 requests more specific information about a member's

affiliation with particular companies identified by FDA that might be affected by the committee's deliberations during a specific meeting.

*See footnote 40.

†The designated federal official for the NASA Space Science Advisory Committee requests short biographical sketches from prospective members. Agency officials consider these sketches when deciding whom to appoint. After the agency has decided to appoint an individual, it requests a copy of a curriculum vitae and a completed form 450.

Regarding the EPA FIFRA Scientific Advisory Panel, this advisory committee convenes about six panels annually to address scientific and technical issues. For example, we reviewed one such panel that was (1) evaluating the range of developmental effects associated with the exposure of amphibians to the pesticide atrazine and (2) determining the significance of these effects for risk assessment and the likely threshold exposure value for eliciting these effects. The executive director of this committee said that candidates with known positions or biases generally are not selected for the panels—that is, the agency does not select individuals previously associated with the agency, regulated industries, or stakeholder communities. In addition, the agency generally does not select individuals with a stated position on the particular matter being reviewed. The FIFRA Scientific Advisory Panel defines balanced membership as including the necessary areas of technical expertise, different scientific perspectives within each technical discipline, and the collective breadth of experience needed to address the agency's charge. In order to evaluate potential members, the FIFRA Scientific Advisory Panel uses CVs and the EPA alternative disclosure form that asks committee members to provide information needed to assess impartiality, such as information about compensated expert testimony and sources of research and project funding during the prior 2 years. The form also asks candidates to consider all relevant information over the past 5 years and to identify and describe any reason that they may be unable to provide impartial advice on the matter to be considered by the panel.

The executive secretary of the FIFRA Scientific Advisory Panel told us that EPA's alternative financial disclosure form—developed to address the limitations we identified in our report on EPA's Science Advisory Board—has greatly facilitated their ability to consistently obtain relevant information. The FIFRA Scientific Advisory Panel also asks potential members several standard questions that we identified in our prior report as relevant to assessing impartiality, such as whether they have made any

oral or written public statement on the issue before the panel.⁴¹ As a result of obtaining and reviewing this information in order to select members and ensure appropriate committee balance overall, the FIFRA Scientific Advisory Panel is in a position to make informed choices. By systematically collecting relevant background information on all candidates, the FIFRA Scientific Advisory Panel is in a position to ensure that its panels are balanced in terms of the points of view represented. We also found that FDA often collects similar information on an alternative form that provides some pertinent information for assessing points of view, but the agency does not use this information to assess the overall balance of the committees. That is, FDA generally uses the form 450 in reviewing candidates for appointments to committees and uses the alternative form to review for conflicts of interest for specific meetings that involve particular matters.

In addition, agencies that have collected forms 450 for special government employees for the purpose of conflict-of-interest reviews may not use the information available to them on the forms that—although designed for conflict-of-interest reviews—could also be helpful in evaluating the points of view committee members may have. For example, the Director of the White House Liaison Office at HHS, who developed the committee roster for the Secretary’s Advisory Committee on Human Research Protections that the Secretary of HHS approved, said that she did not review the forms 450 in selecting members.⁴² She viewed the task of reviewing the forms 450 as the purview of the agency ethics officials who would determine whether financial conflicts of interest existed. In response to our questions about whether affiliations with law firms, identified by some members on the forms 450, may be relevant to consider in terms of their points of view, she said that she did not need to know the particulars about the legal work since she did not consider such information relevant to selection decisions. Further, she said that she did not consider particular points of view candidates may have in making selections. For example, we asked her if she considered the point of view of one member who had publicly stated disagreement on religious grounds with certain research that is included in the committee’s charter, and she said she did not. The Director stated that

⁴¹These questions were not added to EPA’s confidential financial disclosure form, the purpose of which is to support reviews for potential financial conflicts of interest.

⁴²This committee replaced a committee established by the prior administration. In this case, HHS did not renew the committee charter when it expired in 2002, instead HHS opted to create a new committee with a revised charter.

she nominated members to the Secretary for his approval primarily on the basis of their expertise and also considering several demographic factors (gender, race, and geographic location) to the extent these additional factors did not impinge on the department's ability to pick qualified members. She noted that these factors reflect the department's written policies and procedures.⁴³

Officials at other agencies said they considered similar factors in balancing the other eight committees we examined. Specifically, officials indicated that they focused on expertise, demographic characteristics, and employment history as factors to assess points of view as it affects balance. (See table 2.) As previously discussed, FACA does not elaborate on how agencies are to ensure that advisory committees are fairly balanced in terms of the expertise and the points of view of the members, nor does it provide criteria for assessing balance.⁴⁴ Thus, agencies have considerable discretion in determining how they will meet the requirement for achieving balanced committees.

⁴³The Director of the White House Liaison at HHS also managed the appointments to another committee we reviewed, the CDC Advisory Committee on Childhood Lead Poisoning Prevention. She recommended 10 new members to the Secretary for appointments made in 2002 and 2003 to replace members with expiring terms.

⁴⁴In its July 19, 2001, final rule on advisory committee management, GSA did provide a list of factors to consider in achieving a balanced advisory committee membership, such as the advisory committee's mission and the geographic, ethnic, social, economic, or scientific impact of the advisory committee's recommendations.

Table 2: Factors Used by Agencies to Balance Selected Committees

Department/Agency	Name of committee	Expertise	Ethnicity	Gender	Geography	Employment sector
Agriculture/Food Safety and Inspection Service	National Advisory Committee on Microbiological Criteria for Foods	X	X	X	X	X
Energy	Biological and Environmental Research Advisory Committee	X	X	X	X	X
Environmental Protection Agency	Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel	X	X	X		
Health and Human Services	Secretary's Advisory Committee on Human Research Protections	X	X	X	X	
Health and Human Services/Centers for Disease Control and Prevention	Advisory Committee on Childhood Lead Poisoning Prevention	X	X	X	X	
Health and Human Services/Food and Drug Administration	Food Advisory Committee	X	X	X	X	X
Health and Human Services/National Institutes of Health	Scientific Advisory Committee on Alternative Toxicological Methods	X	X	X	X	X
Interior/U.S. Geological Survey	Scientific Earthquake Studies Advisory Committee	X		X	X	X
National Aeronautics and Space Administration	Space Science Advisory Committee	X	X	X	X	X

Sources: Information on the criteria considered to balance committees came from designated federal officials, committee management officials, or other agency officials responsible for nominating or appointing members of committees.

In discussing their selection criteria, most officials reported that in selecting members for these science and technical committees, they focused first and foremost on expertise. Some agency officials said that they do not consider a balance of points of view as relevant to science and technical committees, believing that the appropriate focus for such committees is obtaining the appropriate balance of required expertise. We do not disagree that this focus is appropriate, particularly for committees that address scientific and technical issues. While courts have interpreted FACA as giving agencies broad discretion in how to balance their committees, in our view, the integrity of these committees' advice would be better served if agencies were to consider additional information about potential members' points of view. For example, experts in a given field of expertise may have varying scientific perspectives that agencies could consider for balancing the committee. Along these lines, the FIFRA

Scientific Advisory Panel defines balance as including different scientific perspectives within each technical discipline.

Second, the officials most commonly related “points of view” to demographic factors, such as race, gender, or geographic locations—that is, defining a balance of points of view in terms of demographic diversity. While important, these criteria alone do not provide a robust understanding of the points of view and potential biases the members may bring to the committee vis-à-vis the specific matters the committees will address. That is, these approaches may achieve demographic diversity, but they cannot ensure an appropriate balance of viewpoints relative to the matters being considered by the committees. Third, some of the officials also identified the primary employment affiliation as a factor relevant to achieving a balance of points of view. For example, a factor in committee balance for one committee is the breakdown of members employed by universities, private industry, and federal and state agencies. We agree the primary employment affiliation may be an important consideration for a number of committees to ensure a balance of points of view. However, as we illustrated in our work at EPA’s Science Advisory Board, the staff director of the board viewed some academics as aligned either with industry or environmental perspectives and some experts affiliated with industry as representing an environmental perspective on the basis of information about their other affiliations. Additional information about the candidates’ viewpoints and potential biases would better ensure that the committees are, and are perceived as being, fairly balanced in terms of points of view—and that no one interest or viewpoint dominates. Along these lines, NIH officials told us that the information EPA collects to evaluate potential committee members would be very helpful to them in selecting members and ensuring that committees are balanced as a whole.

Finally, we note that other practices agencies use in forming new committees and in selecting replacement members for existing committees can help them better ensure that their committees are appropriately balanced. These include steps agencies take to identify potential candidates and to seek feedback on proposed committee membership. Appendixes III through XI provide information on the nine committees we reviewed, including how the agencies identified candidates and whether they requested public comments on the committee membership. These and other practices are discussed in the next section.

Promising Practices Could Better Ensure Independence and Balance

Some agencies use practices when forming and managing their committees that can better ensure that federal advisory committee members are independent and that committees are balanced. These practices include (1) obtaining nominations for committee members from the public, (2) using clearly defined processes to obtain and review pertinent information on potential members regarding potential conflicts of interest and impartiality, and (3) prescreening prospective members using a structured interview. In our view, these measures constitute promising practices because they reflect the principles of conflict-of-interest provisions and FACA by employing clearly defined procedures to promote systematic, consistent, and transparent efforts to achieve independent and balanced committees. Although these practices for obtaining and reviewing pertinent information to assess for conflicts of interest and impartiality are broadly applicable, some of the practices, such as seeking public comment on proposed committees, are most particularly relevant to those committees addressing sensitive or controversial topics. If more agencies adopted and effectively implemented these practices, we believe they would have greater assurance that their committees are, and are perceived as being, independent and balanced. In addition, we have identified selected measures that could promote greater transparency in the federal advisory committee system.

Obtaining Nominations from the Public

When seeking to appoint members to their federal advisory committees, agencies often use a combination of methods to obtain nominations for potential committee members. Agencies typically rely on relevant program officials in the agency, officials from other agencies, members of professional organizations, and authors of relevant scientific and technical literatures as ways to identify potential committee members. Some agencies also seek nominations from the public by using widely available resources, such as the *Federal Register* and agency Web sites, to broaden the pool of candidates from which committee members may be drawn. The latter approach is a systematic and transparent method of obtaining

nominations and can provide agencies with greater assurance that a range of relevant experts and/or stakeholders capable of creating impartial and balanced committees are identified.⁴⁵

In addition to their other methods of obtaining nominations from colleagues, professional associations, and the like, we believe agencies should also routinely consider obtaining nominations from the public because this practice can both (1) help agencies identify qualified candidates and (2) alleviate any perception that they are choosing from a narrow pool of candidates that may not provide the appropriate expertise and points of view. It may be particularly relevant to solicit nominations from the public for committees that address sensitive or controversial issues. Obtaining nominations from the public may require more time and effort than less formal approaches to identifying committee members and may also involve a publishing cost. However, by actively engaging the public and all interested parties in the process in an open and transparent manner, the agency's credibility may be enhanced.

Using Clearly Defined Processes to Screen for Conflicts of Interest and Points of View

As previously discussed, many agencies do not consistently collect information that could be helpful in determining the viewpoints of potential members and ensuring that committees are, and are perceived as being, balanced. However, the National Academies and EPA have developed clear processes that, if effectively implemented, can provide them with greater assurance that relevant conflicts of interest and biases are identified and addressed, and that committees are appropriately balanced in terms of points of view because they have identified and evaluated the necessary information before committees are finalized.

⁴⁵Some of the committees and agencies that publish *Federal Register* notices seeking nominations include EPA's Science Advisory Board; EPA's FIFRA Scientific Advisory Panel; all committees managed by FDA, such as the Food Advisory Committee; and a number of committees managed by USDA's Food Safety and Inspection Service, such as the National Advisory Committee on Microbiological Criteria for Foods. USDA also sought nominations using an announcement on the agency and advisory committee Web pages and in a weekly newsletter sent to interested organizations and individuals. EPA's Science Advisory Board also uses its Web site as a vehicle for soliciting nominations to its peer review committees.

Specifically, the processes used by the National Academies and EPA's Science Advisory Board clearly and consistently

- identify the information they deem necessary to assess candidates for independence and to balance committees,
- explain to the candidates why the required information is important to protect the integrity of the committee's work,
- request public comment on proposed committee membership, and
- require evaluation of the overall balance of committees before committees are finalized.

Overviews of the processes used by the National Academies and the Science Advisory Board are provided below.

The National Academies

In 2001, we reported that to help balance their committees and safeguard their credibility, the National Academies provide prospective members with a document that offers a succinct, straightforward discussion of what constitutes potential conflicts of interest and biases and explains what information they are required to provide to the National Academies on a standard form.⁴⁶ In 2003, the National Academies updated their procedures covering conflicts of interest and bias, issuing their *Policy on Committee Composition and Balance and Conflicts of Interest for Committees Used in the Development of Reports*. In explaining the need for obtaining background information about prospective members, the National Academies emphasize that the work of their committees must be, and must be perceived as being, free of any significant conflict of interest⁴⁷ and uncompromised by bias. The National Academies state that allegations of conflict of interest or lack of balance and objectivity can undermine the

⁴⁶GAO-01-536.

⁴⁷Members of committees of the National Academies are not subject to the same conflict-of-interest provisions as are members of FACA committees sponsored by federal agencies. The National Academy of Science is required to make its best effort to ensure that no committee member has a conflict of interest that is relevant to the functions to be performed, unless the conflict is publicly disclosed and the academy determines that it is unavoidable. The academies define a conflict of interest as any financial or other interest that conflicts with the service of an individual because it (1) could impair the individual's objectivity or (2) could create an unfair competitive advantage for any person or organization.

conclusions of fully competent committees. The academies continue to request the following information from potential members on a standard form:⁴⁸

- organizational affiliations,
- financial interests,
- research support,
- government service, and
- public statements and positions.

In addition, prospective committee members are asked to identify and describe any other circumstances in their background or present connections that might reasonably be construed as unduly affecting their judgment or that might be reasonably viewed as creating an actual or potential bias or conflict of interest or the appearance of a bias or conflict of interest. Further, the National Academies post information about panel candidates on a Web site for public comment, allowing the public the opportunity to identify any real or perceived conflicts or biases associated with individual members and the ability to raise issues regarding the balance of viewpoints on the proposed committee. Lastly, the National Academies do not finalize their committee selections until officials have reviewed and evaluated information provided by prospective members and comments received from the public regarding the proposed makeup of the committee. As we previously reported, this process has proven beneficial to the academies in selecting balanced peer review panels.⁴⁹

EPA's Science Advisory Board

EPA's Science Advisory Board staff office has also developed a systematic process to obtain and evaluate the information it needs to assess potential members for potential conflicts of interest and to properly balance the range of expertise and viewpoints on the board. As previously discussed, federal committee members serving as special government employees are

⁴⁸Potential members complete one of three similar forms covering background information and confidential conflict-of-interest disclosure, depending on the type of study involved: program reviews and evaluations, general scientific and technical studies and assistance, and studies related to government regulations.

⁴⁹GAO-01-536.

subject to the criminal financial conflict-of-interest statute. The staff office uses the alternative form that EPA developed, form 3110-48, for special government employees serving on advisory committees to collect information that enables the agency to evaluate potential members for legal conflicts of interest and also helps the agency in assessing for impartiality and points of view. The staff office also contacts prospective panelists and asks them five standard questions to help the office assess the panelists' points of view, such as whether they have made any public statements on the issues that the panels will consider. The staff office uses this information to help ensure that any legal conflicts of interest are identified and appropriately mitigated and to help ensure that committees as a whole are balanced in terms of points of view.

EPA's form 3110-48 explains that the information being requested is needed so that EPA ethics officials can make an informed judgment regarding any conflict of interest or appearance of lack of impartiality. The Science Advisory Board staff office further explains how it uses the information that it collects in its brochure entitled *Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board*. As previously discussed, the information that EPA collects on the form 3110-48 includes sources of income and assets, liabilities, outside positions, consulting activities, sources of research support or project funding, and compensated expert testimony. Further, similar to the National Academies, EPA requests potential members to identify and describe on the form any reason they may be unable to provide impartial advice on matters before the committee and any reason their impartiality in the identified matter might be questioned. The Science Advisory Board staff office also searches independently for background information on prospective members to understand their qualifications and points of view. Also, like the National Academies, EPA uses a public notice process to obtain comments on proposed candidates for its Science Advisory Board. That is, the staff office publishes the names and biographical sketches of candidates for its committees on the board's Web site, requesting the public to provide information, analysis, or documentation that it should consider in evaluating the candidates. The staff office does not finalize their committee selections until officials have reviewed and evaluated the information provided by the candidates, any other information the public may have provided, and information gathered by the staff independently on the background of each prospective member. According to a designated federal official for the board, the public comment period is a last check in the screening process that can identify information about prospective candidates, such as publicly stated positions on matters related to the

committee, that the staff office would want to verify and evaluate prior to making panel selections. He said the staff office has received feedback that the biographical sketches are helpful, and he believes this practice enhances the public's perception of the board's panel formation process.

Prescreening Prospective Members Using a Structured Interview

EPA's FIFRA Scientific Advisory Panel has a committee formation process similar to that of the Science Advisory Board that also identifies the specific information the staff will discuss in interviews with prospective members. Although the purposes of the structured interview include assessing the interest, availability, and expertise of the potential member, a primary focus is on evaluating potential financial conflicts of interest and biases. In addition, the interview provides EPA with the opportunity to explain the ethical obligations of committee members and discuss in detail the information that members would have to provide on the EPA form 3110-48 before they could be appointed to the committee. This process is efficient because it enables the panel to quickly identify those individuals who meet its criteria for independence and impartiality.⁵⁰ Further, prospective members who subsequently complete the form 3110-48 will be better prepared to complete the form accurately. We note that the panel's interview protocol, including the structured interview itself, is available on its Web site. Thus, prospective members and the public are informed of the processes and the issues that will be discussed with all prospective members. The panel's approach to obtaining relevant information from prospective committee members is systematic, consistent, and transparent. Further, we believe it unlikely that agencies formalizing and publicizing their processes for obtaining information from prospective committee members would approve questions that are generally inappropriate in a professional working environment, such as questions about party affiliation or political viewpoints that some committee members at other agencies have reported being asked.

⁵⁰FDA also has a form that agency staff may use to conduct a preliminary interview "to identify obvious conflicts of interest that may preclude appointment." This form is called the Prospective Special Government Employee Personal Data Sheet (Preliminary Informal Interview), form FDA 2725a (July 1992).

Selected Measures Could Promote Greater Transparency in the Federal Advisory Committee System

In light of recent controversies surrounding the perceived politicization of federal advisory committees, we identified several other measures to improve transparency in the federal advisory committee system. Although none of these measures can ensure that committee members are independent and that committees are balanced, we believe each of these alternatives has the potential to increase public understanding of the process of appointing advisory committee members and make more transparent the operations of federal advisory committees.

In the interest of transparency, agencies could make public the following information about each of their advisory committees:

- The committee formation process: how members are identified and screened, and how committees are assessed for balance.
- Whether members are appointed as special government employees and are speaking as independent experts, or whether members are appointed as representatives and speaking as stakeholders.
- Whether committees arrive at decisions through a voting process or by consensus.

There are several contexts in which agencies could make this information available to the public. Specifically, the information could be

- written in the committee's charter;
- posted on the GSA on-line database;
- posted on the agency or committee's Web site;
- announced at committee meetings; or
- identified on committee work products (reports, studies, or recommendations).

It is in the public interest to disclose such basic information about federal advisory committees. Further, we believe that taking such measures to make information about committees available to the public would help educate interested parties about the formation of committees and better enable them to evaluate whether agencies have complied with conflict-of-interest requirements and the FACA requirements for balance. Given

recent well-publicized accusations of biases and conflicts of interest, efforts to improve the transparency of the federal advisory committee system can only serve to inspire greater public trust in the process and enhance the credibility of committees' work.

Along these lines, we have identified two additional measures to promote transparency that may warrant consideration: (1) public disclosure of information concerning conflict-of-interest waivers and (2) internal disclosure of potential conflicts of interest and sources of bias among committee members prior to the initiation of committee work.

Agencies may grant waivers to special government employees who have potential conflicts of interest if the agency determines that either (1) the conflict is insignificant or (2) the need for the member's expertise outweighs the conflict. The financial conflict-of-interest statute requires that agencies provide limited information to the public about waivers upon request; namely, that an agency has granted a waiver and the basis on which it was granted. The statute does not require, however, that agencies proactively notify the public about waivers, either during advisory committee meetings, in meeting minutes, or in committee products. Our review of selected committees found that agencies typically did not disclose this information. In contrast, FDA has had a practice of providing at the beginning of meetings a summary disclosure of any waivers granted to members for that meeting. The disclosure identifies which members have received waivers and whether the waivers were granted on the basis that conflict was insignificant or that the need for the expertise outweighed the potential conflict. Because information about the conflicts pertained to information that members provide to agencies on confidential financial disclosure forms that are protected under the Federal Privacy Act, details about the conflicts were not provided. Thus, the public and others could not evaluate the impact of the conflict on a person's ability to provide impartial advice. In February 2002, as a result of a statutory requirement, FDA issued for public comment a draft guidance document describing its policy of disclosing specific information with respect to waivers granted for particular matters of specific applicability—that is, when members have a direct relationship with the products, interests, and issues under the review of the committee. Under this policy, FDA discloses not only the existence of a waiver but also information on the committee member's

interests that constitute a conflict.⁵¹ To address the constraints imposed by the Federal Privacy Act, FDA requires committee members to sign a consent form giving FDA permission to publicly disclose this information before members receive a waiver. According to FDA officials, committee members have generally been willing to sign the consent forms and to disclose this information. We believe the practice of publicly disclosing the issuance of conflict-of-interest waivers to committee members increases transparency and can also increase the credibility of the committee process by allowing the public to know when a potential conflict exists and why the agency saw fit to grant the member a waiver. Further, the application of this practice could be expanded to include not only particular matters of specific applicability (in which a particular company or individual is likely to be affected by the matter) but also to other particular matters (in which, for example, an industry or group of persons is likely to be affected).

The National Academies have a policy of asking their committees to engage in an internal discussion about members' work experiences, affiliations, and other circumstances that might pose a potential conflict of interest. The academies believe that an internal disclosure of this information promotes transparency and serves to increase the credibility of the committees' work. We agree that a confidential discussion among committee members regarding real or perceived conflicts of interest and biases can provide committee members with important background information that can enable them to better evaluate the perspectives of their fellow committee members. Understandably, extending such a practice to federal advisory committees, and in particular to members appointed as special government employees, raises privacy questions because special government employees are under no obligation to disclose such information to fellow committee members or the public. However, we believe that the possibility of requiring members to disclose background information, affiliations, and other sources of potential conflicts of interest and biases among individual committee members at an internal disclosure session prior to the committee's beginning its work warrants study.

⁵¹According to EPA, the staff office for the Science Advisory Board actively avoids granting waivers, preferring to choose another panelist instead. However, in the event that EPA grants a waiver, the designated federal official discloses that information at the start of meetings. EPA would disclose only the name of the individual and the type of waiver granted—not the details of the conflict.

Conclusions

For federal advisory committees to be successful, the members must be independent and the committees balanced—that is, they must be able to provide, and be perceived as providing, credible and balanced advice. A spectrum of scientists and other experts perceive recent appointments to some science and technical committees as being influenced more by ideology than expertise. Independent of the facts and specific issues involved, this perception alone is problematic. The perception of the federal advisory committee system as politicized can jeopardize the value of an individual committee’s work; discourage the participation of scientists, experts, and other potential members on future advisory committees; and call into question the integrity of the federal advisory committee system itself. Because allegations of conflict of interest and bias can undermine the work of otherwise credible and competent committees and threaten the integrity of the federal advisory committee system, the best interests of the government are served by governmentwide guidance and agency-level policies and procedures for addressing potential conflicts of interest and ensuring that committees are, and are perceived as being, balanced. However, federal guidance in these key areas has limitations that reduce its effectiveness.

First, OGE guidance on representative appointments can be strengthened to better ensure that agencies are appropriately appointing committee members. Unless certain ambiguities in the guidance are clarified, some agencies may continue to appoint members providing advice on behalf of the government as representatives and not conduct reviews of potential conflicts, thereby leaving the specific committees and the federal advisory committee system itself vulnerable to potential criticism if potential conflicts of interest are identified. Clarifications that are needed to ensure that representative appointments are made only when the individuals are, in fact, asked to provide advice representing the positions of the stakeholders they are representing include specifying that representative appointments generally are not appropriate for individuals who are to provide advice on the basis of their expertise. Justifying representative appointments on this basis avoids using the special government employee category, which was specifically created to facilitate the government’s ability to hire various experts for just such a purpose as serving on federal advisory committees. The guidance should also clarify that the use of the term “representative” in a statute or charter may be used in a generic sense and does not necessarily mean the members are to be appointed as representatives who are to provide stakeholder advice. Again, in considering which type of appointment is appropriate, the focus should be

on the nature of the advice to be provided. That is, individuals who are appointed to federal advisory committees to provide advice on behalf of the government (i.e., individuals who are not providing stakeholder advice) should be appointed as special government employees. Finally, one of the first steps agency officials should take in establishing new committees is to determine, in consultations with agency ethics officials, the appropriate appointment category for members. These decisions should be reviewed as committee charters are renewed every 2 years.

Second, GSA could provide guidance that would assist agencies in identifying the kinds of information they should systematically collect in order to determine the viewpoints of prospective committee members for the purpose of ensuring that committees are, and are perceived as being, balanced. Although the type of information relevant to each committee might differ in some respects, more systematic information collection and evaluation can support better, and more informed, committee appointments.

Improving existing federal guidance and agency procedures and incorporating the revised guidance into the FACA management course should enable federal agencies to better ensure that (1) potential conflicts of interest of committee members have been identified and appropriately mitigated upfront and (2) committees are appropriately balanced in terms of points of view and functions to be performed. Along these lines, alternative procedures used to create and manage advisory committees at some federal agencies and the National Academies constitute promising practices that can better ensure independence and balance. Procedures such as obtaining nominations for committee members from the public, reviewing more pertinent information regarding members' points of view, and prescreening prospective members using a structured interview would help agencies establish more systematic and consistent methods of achieving independent and balanced committees. Consistent with FACA's principle of transparency, agencies could also adopt selected measures to make public more information regarding how they form and manage their committees. We believe it is in the best interest of both the public and the government to disclose more information about the formation and operation of the advisory committees—for example, how the members are identified and screened, and whether members are serving as representatives of an identified interest or as special government employees to provide independent advice. In light of recent concerns about biases and conflicts of interest, adopting more clearly defined procedures to screen and appoint committee members and to increase

transparency in the advisory committee process would constitute important steps toward protecting the integrity of the federal advisory committee system and maintaining public confidence in the work of federal advisory committees.

Because this report identifies improvements to guidance and promising management practices that generally apply to all federal agencies that sponsor advisory committees and not just to the nine agencies addressed in this report, we are directing our recommendations to OGE and GSA in their roles as providers of governmentwide guidance on federal ethics and advisory committee management requirements. Our expectation is that all 54 federal agencies that currently sponsor federal advisory committees could benefit from the improved guidance and management practices.

Recommendations for Executive Action

To better ensure that federal agencies correctly and consistently comply with federal requirements when appointing federal advisory committee members, we recommend that the Director of the Office of Government Ethics revise its 1982 guidance to federal agencies defining representative appointments to federal advisory committees. The guidance should

- clarify that classes of expertise generally are not a “recognizable group of persons” for purposes of making representative appointments;
- consistently state that appointments as representatives are limited to circumstances in which the members are speaking as stakeholders for the entities or groups they represent; and
- clarify that the term “representative” in statutes and charters may also be used more generically to identify the appropriate balance of points of view or expertise and may not be specifying that representative appointments be used, and revise the directions on specifying representative appointments to focus on the type of advice representatives are to provide—that is, stakeholder advice.

To ensure that agencies’ appointments to federal advisory committees are appropriate, we further recommend that the Director of the Office of Government Ethics and the GSA Committee Management Secretariat

- direct federal agencies to review their representative appointments to federal advisory committees either as the 2-year charters expire or, for those committees with indefinite charters, within 1 year to determine if

the appointments are appropriate and to reappoint members as special government employees, where appropriate, and

- direct agency committee management officials to consult with agency ethics officials in making decisions about the type of appointments that should be made for each committee.

To better ensure that the agency staff managing federal advisory committees understand when to appoint committee members as representatives and when to appoint them as special government employees, we recommend that GSA and OGE revise the training materials for the FACA management course, incorporating the additional OGE guidance as recommended above, and ensure that the course materials highlight the fact that appointment decisions should be based on the type of advice the committee members are to provide.

To better ensure that federal advisory committee members providing stakeholder advice, and thus serving as representative members exempt from federal financial conflict-of-interest statutes, do not have other unknown points of view or biases, we recommend that OGE and GSA direct agencies to determine, for each relevant committee, the potential for such other biases and to take the appropriate steps to ensure their representative members do not have such biases. At a minimum, representatives should receive ethics training and be asked whether they know of any reason their participation on the committee might reasonably be questioned—for example, because of any personal benefits that could ensue from financial holdings, patents, or other interests.

To better ensure that agencies have robust information to establish committees that are balanced in terms of points of view and the functions to be performed, we recommend that GSA provide guidance to agencies regarding what background information might be relevant in assessing committee members' points of view. Relevant information for these purposes could include previous or ongoing research, public statements or positions on the matter being reviewed, the interest of the employer or clients in the matter, participation in legal proceedings, and work for affected entities. In addition, potential committee members should be asked if there is any reason they might be unable to provide impartial advice on the matter or matters before the committee, or if they know of any reason their impartiality on the matter or matters might be questioned.

To better ensure that the committee members, agency and congressional officials, and the public understand the nature of the advice provided by federal advisory committees, we recommend that GSA issue guidance that agencies should

- identify the committee formation process used for each committee, particularly how members are identified and screened and how committees are assessed for overall balance;
- state in the appointment letters to committee members whether they are appointed as special government employees or representatives; in cases where appointments are as representatives, the letters should further identify the entity or group that they are to represent;
- identify each member's appointment category on the GSA FACA database; for representative members, the entity or group represented should also be identified; and
- state in the committee products the nature of the advice provided—that is, whether the product is based on independent advice or consensus among the various identified interests or stakeholders.

Agency Comments and Our Evaluation

We provided copies of a draft of this report to the two agencies, GSA and OGE, to whom we address our recommendations to provide additional guidance to federal agencies, and to the agencies whose advisory committee management policies and procedures we reviewed: EPA; Energy; HHS (with copies to CDC, FDA, and NIH); Interior; NASA; and USDA.

In commenting on the draft report, GSA agreed with the findings relating to those areas under its purview. Further, GSA generally agreed with our recommendations to OGE and GSA and outlined a proactive approach to addressing those that pertain to GSA, including making changes to its on-line FACA database, and to working with OGE on those that pertain to OGE's responsibilities. GSA stated that it expects to complete all necessary actions directly under its purview and those to be achieved collaboratively with OGE and other agencies during fiscal year 2005. GSA's comments are provided in appendix XII.

In its comments, OGE acknowledged that some agencies may be inappropriately using representative appointments. Further, in responding

to our finding that several agencies believe representatives may be appointed to represent their fields of expertise, OGE agrees with us that such appointments are inappropriate—but does not agree that any limitations in its guidance are a factor in the misuse of representative appointments. Instead, OGE believes some agencies may be purposely designating their committee members as representatives to avoid subjecting them to the financial disclosure statements required for special government employees—that is, agencies understand the guidance and are simply disregarding it. Thus, OGE disagrees with us that its guidance should directly address this apparent misinterpretation of its guidance by clarifying, for example, that classes of expertise are not a “recognizable group of persons” for purposes of making representative appointments. OGE states that its 1982 guidance accurately represents a decades old, executive branch interpretation of the definition of special government employees, and that our report does not provide adequate support for a recommendation that the guidance be modified. We disagree. Unless OGE clarifies the issues our report has identified, progress will likely continue to be slow or nonexistent—remembering that the 1982 guidance itself was developed to address uncertainties regarding the appropriate uses of representative and special government employee appointments. We believe that clearer guidance would make it more difficult for agencies to misapply the guidance. Further, unambiguous guidance would better assist agency staff managing committees and better support oversight by agency ethics officials, OGE, and others, such as inspectors general and GAO. In addition, OGE’s response that clarifications are not needed does not acknowledge the views of other federal agencies, presented in the draft report, that OGE guidance is ambiguous in some respects. For example, EPA and NASA officials stated that having clear criteria for representative appointments would be helpful to agencies. In addition, we note that Interior states in its comments to us on the report that “GAO’s generalization that representation of fields of expertise is not appropriate ignores the importance of such representation to some committees.” On the basis of this statement, we do not believe Interior appreciates that expert advice can be appropriately obtained by the appointment of special government employees. In addition, NASA’s and Energy’s comments on the report also support the appointment of representatives to represent fields of expertise. We believe these statements illustrate the need for clarifications to OGE guidance on representative and special government employee appointments to federal advisory committees. Finally, in our view, if agencies are continuing to make inappropriate appointments decades after criteria and guidance were developed, it is not unreasonable

to take another look at the guidance. OGE's comments and our evaluation of them are discussed in more detail in appendix XIII.

In commenting on the draft, officials from EPA and USDA agreed with the substance of the report, providing only technical comments that we incorporated into the draft as appropriate. USDA indicated that the report is a helpful and comprehensive review of issues that can be used as a resource for agencies that rely on the advice of federal advisory committees.

HHS provided consolidated written comments (including its component agencies CDC, FDA, and NIH). HHS said the report will be useful in evaluating current practices for appointing members to serve on federal advisory committees and also noted that the report provides a number of interesting ideas for determining balance in points of view and ensuring transparency in the committee process. HHS said that it finds the report's recommendations of great value and indicated that NIH has volunteered to work with GSA to assist them in implementing the recommendations. At the same time, HHS expressed its belief that members of scientific advisory committees should be selected because of their expertise, background, and personal experience, rather than through a "process seeking out some indefinable range of personal opinion"—characterizing points of view as both undefinable and open to misinterpretation. However, the draft and final reports do not espouse a "process seeking out some indefinable range of personal opinion" but rather identify processes that include an evaluation of potential members' points of view *relevant to the subject matters advisory committees will consider* while focusing on the relevant expertise needed. The examples of agency processes provided in the report include targeted evaluations of points of view by asking potential members a few questions, such as whether they have made public statements or taken public positions on the issue or matters the committee will consider. They also ask potential members to identify and describe any reason they may be unable to provide impartial advice on matters before the committee and any reason their impartiality in the identified matter might be questioned. In our view, agencies that do not proactively and transparently address the relevant points of view of prospective committee members regarding the matters the committees will consider are more likely to be subject to questions about committee balance from the public and potential users of the committees' products than those agencies that use such processes. We continue to believe that the credibility of advisory committees, in particular those that address sensitive and controversial issues, depends in part upon agencies' ability to

identify and balance points of view held by members and prospective members that are relevant to the work of the committee. HHS's comments and our evaluation of them are discussed in more detail in appendix XIV.

In written comments, Interior agreed with much in the report and indicated that it contains many useful recommendations that can be used to enhance the successful use of advisory committees. Interior identified one overarching concern with the draft report, however. That is, Interior said our report gave the incorrect impression that FACA requires individuals on committees to be free of conflicts of interest, noting that FACA requires that committees, rather than individuals, not be inappropriately influenced by the appointing authority or any special interest. The draft and final reports acknowledge this FACA requirement in the background section. However, the draft and final reports also explicitly state that our focus was on (1) the requirements regarding individual conflicts of interest that are included in federal conflict-of-interest statutes and (2) the FACA requirement for committee balance. Further, in the introduction, we state that "federal advisory committee members who are employees of the federal government must meet federal requirements pertaining to freedom from conflicts of interest—which we refer to in this report as independence—and committees as a whole must meet the requirements pertaining to balance." We further highlight the key provisions of the federal conflict-of-interest statutes that must be complied with unless granted a waiver in one section of the report and the FACA requirements for balance in another. Interior's comments and our evaluation of them are discussed in more detail in appendix XV.

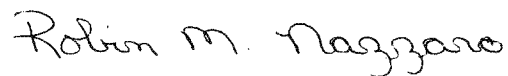
In commenting on the draft report, NASA said that our conclusion that agencies could benefit from additional guidance to better ensure independence, balance, and transparency is sound. However, NASA supports the appointment of federal advisory committee members as representatives of their fields of expertise on the basis that some experts would not be able to serve as special government employees due to financial conflicts of interest. We believe this perspective provides additional support for our view that OGE needs to provide additional guidance on the appropriate use of representative appointments, including clarifying that fields of expertise generally are not a recognizable group of persons for purposes of making representative appointments. NASA's comments and our evaluation of them are discussed in more detail in appendix XVI.

In commenting on the draft report, Energy's Office of Science expressed its concern that we were recommending a "one-size-fits-all" approach that would diminish the effectiveness of the office's advisory committees. In addition, the office said that our interpretation of the term "representative" is unpersuasive and would be an unsound basis of guidance for the department. We do not believe that we are recommending a "one-size-fits-all" approach to advisory committee management. We recognize that there are many types of committees that serve different functions. Nevertheless, we believe that there are certain requirements in FACA and the conflict-of-interest statutes that must be met by all committees. With regard to the suggestions we made for selecting committee members, we note that they were described as "promising practices" that could be useful to agencies. They were not recommendations. As for the term "representative," we continue to believe that our interpretation of the OGE guidance is correct and that our interpretation is supported by OGE's comments on our draft report. In particular, we believe that it is inappropriate for agencies to appoint members as "representatives" of a field of expertise, as Energy's Office of Science indicates it will continue to do. Energy's comments and our evaluation of them are discussed in more detail in appendix XVII.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we will plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to other interested congressional committees; the Secretaries of Agriculture, Energy, Health and Human Services, and the Interior; the Administrators of the U.S. Environmental Protection Agency, the General Services Administration, and the National Aeronautics and Space Administration; and the Director of the Office of Government Ethics. We will make copies

available to others upon request. In addition, the report will be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staff have any questions, please call me at (202) 512-3841. Key contributors to this report are listed in appendix XVIII.

A handwritten signature in black ink that reads "Robin M. Nazzaro". The signature is written in a cursive, slightly slanted style.

Robin M. Nazzaro
Director, Natural Resources
and Environment

Objectives, Scope, and Methodology

This report (1) describes the role of federal advisory committees in the development of national policies; (2) examines the extent to which governmentwide and agency-specific policies and procedures for evaluating committee members for conflicts of interest and points of view ensure independent and balanced federal advisory committees; and (3) identifies practices that could better ensure that committees are, and are perceived as being, independent and balanced.

To describe the role of federal advisory committees in the development of national policies, we reviewed committee charters, reports, and Web pages available through the General Services Administration's (GSA) on-line Federal Advisory Committee Act (FACA) database. We discussed the FACA database with the GSA staff that developed and maintain the database. Our discussion included issues such as data entry access, quality control procedures, and the accuracy and completeness of the data. We determined that the data on the overall universe of advisory committees were reliable for the purposes of this report, including describing the variety of issues the committees address.

To examine the extent to which current policies and procedures for evaluating committee members for conflicts of interest and points of view ensure independent and balanced federal advisory committees, we reviewed the relevant policies and procedures at six federal departments and agencies that make extensive use of federal advisory committees—the Departments of Agriculture (USDA), Energy, Health and Human Services (HHS), and the Interior; the National Aeronautics and Space Administration (NASA); and the Environmental Protection Agency (EPA). These agencies were among the 11 that used the most science and technical committees in 2003.¹ Because HHS entities manage 26 percent of all federal advisory committees and 36 percent of the scientific and technical committees, we also reviewed the policies and procedures at three HHS entities that sponsor many federal advisory committees—the Centers for Disease Control and Prevention (CDC), the Food and Drug Administration (FDA), and the National Institutes of Health (NIH). We reviewed the policies and procedures used by these nine departments and agencies to manage federal advisory committees. These policies, in some cases, address appointments of committee members as special government employees or representatives and address how agencies identify, screen,

¹In fiscal year 2003, the six agencies we reviewed sponsored 477 of 948 active federal advisory committees. They sponsored 126 of the 208 scientific and technical committees.

and appoint members so as to ensure that they are free of conflicts of interest and that the committees are balanced. We interviewed committee management officials, designated federal officials, and agency staff on committee management issues.

Further, to better understand how the agencies implement their policies and procedures as well as the Office of Government Ethics's (OGE) and GSA's governmentwide regulations and guidance, we examined the management of one committee at each of the nine departments and agencies. We selected a nonprobability sample² of nine committees that address scientific and technical issues using the following criteria: selected committees had to examine issues that are national in scope and scientifically complex, could have regulatory implications, and/or could be potentially controversial either because of the issues that they address or because the committee had been the subject of allegations regarding membership. For these nine committees, we reviewed the confidential financial disclosure forms of the committee members appointed as special government employees and discussed with staff how the committees used this information with respect to conflict-of-interest and/or balance determinations. To learn more about how agencies screen individuals for membership, we also examined other materials that agencies collected about them, such as their curricula vitae (CV) and résumés. The focus of our review was on the adequacy of federal policies and procedures to ensure independence and balance, and we did not make any judgments on whether conflicts of interest existed or whether the committees we examined were properly balanced. The way in which the agencies managed these particular committees cannot be generalized to represent the way in which the agencies manage all of their committees.

To determine if conflict-of-interest evaluations were performed as required by OGE guidance, we reviewed the relevant guidance and discussed with agency officials their use of representative and special government employee appointments. The purpose of the discussions was to determine whether the representative appointments were appropriately used because representative members are not required to undergo conflict-of-interest reviews. For the three departments that used representative appointments almost exclusively, we identified the committees the agencies categorize as

²Results from nonprobability samples cannot be used to make inferences about a population. This is because, in a nonprobability sample, some elements of the population being studied have no chance or an unknown chance of being selected as part of the sample.

addressing scientific and technical matters for which advice on behalf of the government on the basis of best judgment is often sought, rather than stakeholder advice. For the individual committees selected for review at each agency (described above), we examined the committee statutes and charters and interviewed agency officials to determine whether the representative members were asked to provide stakeholder or nonstakeholder advice.

To determine if agencies collect sufficient information to assess the points of view of its committee members appointed as special government employees, we assessed whether agencies systematically collected background information on committee members in addition to the OGE form 450 used to evaluate for potential financial conflicts of interest and CVs or résumés. We identified other information that is helpful in assessing points of view and thus to ensuring that the committees achieve a proper balance of viewpoints.

Further, in examining the extent to which the regulations and guidance on evaluating committee members for conflicts of interest and impartiality ensure independent and balanced federal advisory committees, we reviewed the OGE regulations and guidance to federal agencies regarding federal conflict-of-interest provisions and GSA regulations and guidance to federal agencies regarding FACA. We interviewed OGE staff who are responsible for auditing agencies' ethics programs and who assist agencies in resolving conflict-of-interest issues. These staff members also address issues related to the appointment of special government employees and representative members to federal advisory committees. We interviewed the director and other officials from GSA's Committee Management Secretariat to learn about FACA requirements, GSA regulations, and other GSA guidance documents designed to assist agencies in managing their committees. We also discussed with GSA officials how agencies use the GSA FACA database to provide information to the public about committee membership and activities.

To identify practices that could better ensure that committees are, and are perceived as being, independent and balanced, we examined the relevant policies and procedures of the National Academies;³ the nine committees and agencies examined in this review; and EPA's Science Advisory Board, which had implemented a number of relevant changes to its policies and procedures in response to our June 2001 report.⁴

We conducted our review from January 2003 through March 2004 in accordance with generally accepted government auditing standards.

³The National Academies consist of four private, nonprofit organizations that advise the federal government on scientific and technical matters: the National Academy of Sciences, the National Academy of Engineering, the Institute of Medicine, and the National Research Council.

⁴U.S. General Accounting Office, *EPA's Science Advisory Board Panels: Improved Policies and Procedures Needed to Ensure Independence and Balance*, GAO-01-536 (Washington, D.C.: June 12, 2001).

Federal Advisory Committees, by Authorizing Mechanism and Type, in Fiscal Year 2003

This appendix provides information on the ways that advisory committees have been authorized, the functional categories of the committees as reported by agencies to GSA, and the number of federal advisory committee members.

Presidents, the Congress, and federal agencies can create federal advisory committees. As shown in table 3, most of the federal advisory committees operating in fiscal year 2003 were required or authorized by the Congress, some were created by the agencies, while the fewest committees were created by presidential directives.

Table 3: Authorizing Mechanism for Active Federal Advisory Committees in Fiscal Year 2003

Authorizing mechanism	Number of committees
Required or authorized by the Congress	
Required by the Congress via statute	421
Specifically authorized by statute but created at the discretion of an agency	213
Subtotal	634
Created by an agency under general statutory authority	271
Presidential directive	43
Total	948

Source: GSA FACA database.

Sponsoring agencies broadly classify their advisory committees according to the types of issues they address, using one of the following seven general categories defined in GSA’s federal advisory committee database: scientific and technical program, nonscientific program, national policy issue, grant review, grant review-special emphasis panel,¹ regulatory negotiation, and “other.” According to GSA’s fiscal year 2003 database (see table 4), 208 of the 948 active committees were categorized as scientific and technical committees. However, in addition to these, committees in other categories also address scientific and technical issues, particularly the grant review committees. There were 131 grant review committees with over 41,000

¹HHS uses the term “special emphasis panel” for some of its grant review panels at NIH. Of the 29 special emphasis panels in fiscal year 2003, NIH sponsored 24 panels.

members in 2003. Further, some committees placed in the national policy, regulatory negotiation, and “other” categories also address scientific and technical issues.

Table 4: Active Federal Advisory Committees, by Type, in Fiscal Year 2003

Type of committee	Number of committees	Number of members
Grant review	102	22,517
Grant review – special emphasis panel ^a	29	19,226
National policy issue advisory board	152	3,834
Nonscientific program advisory board	298	5,470
Other	152	3,323
Regulatory negotiation	7	217
Scientific and technical program advisory board	208	7,910
Total	948	62,497

Source: GSA FACA database.

^aNIH defines a special emphasis panel as a committee that functions both as an initial review group performing the scientific and technical peer review of applications and cooperative agreement applications and as reviewers of contract proposals and concept reviews. The membership is fluid, and individuals are designated to serve for only the meeting they are requested to attend.

The committees in fiscal year 2003 had more than 62,000 members, the majority of whom were members of grant review and special emphasis panels.² Overall, federal advisory committees range in size from under 10 members to over 9,000, with an average of about 48 members.³ The committees classified as scientific and technical had 7,910 members and an

²Although these panels may have several hundred members and may hold dozens or more meetings in a year, the members do not all attend all of the panels’ meetings. Instead, each member might be called upon to attend one meeting per year to review a narrowly focused set of grant proposals. This practice is in contrast to the practice of other categories of committees in which the members are invited to attend each of a generally small number of meetings held each year.

³This average was calculated after subtracting the 6 largest committees, including HHS’s Center for Scientific Review Special Emphasis Panel, which in fiscal year 2003 maintained a roster of 9,080 members and held over 1,100 meetings. Five other advisory committees had over 1,000 members. If those committees are counted, the average size of the committees is about 66 members.

average committee membership size of about 22 members.⁴ Federal advisory committee members come from a wide range of professional backgrounds and include scientists, medical doctors and other health care professionals, academics, lawyers, engineers, corporate executives, state and local government officials, members of nongovernmental organizations, community activists, and representatives from the public at large, among others. Some members are federal employees, often from agencies other than the sponsoring agency.

⁴This average was calculated after subtracting the membership of the 2 largest science committees, both sponsored by the Department of Transportation—RTCA, Inc. (with 2,718 members) and the Intelligent Transportation Society of America (with 570 members).

Information on the Department of Agriculture's National Advisory Committee on Microbiological Criteria for Foods

This appendix contains information about the National Advisory Committee on Microbiological Criteria for Foods. Although this committee is cosponsored by USDA, HHS, and the Departments of Defense and Commerce, USDA is responsible for the overall management of the committee. Within USDA, the Food Safety and Inspection Service (FSIS) manages this committee, and the Secretary of Agriculture appoints the members.

Purpose of the committee: According to its charter, the purpose of the committee is to provide impartial, scientific advice to federal food safety agencies for use in the development of an integrated national food safety systems approach from farm to final consumption to ensure the safety of domestic, imported, and exported foods.

Number of members: 29 (see table 5).

Type of appointment: Representative.

Conflict-of-interest reviews: The members are appointed as representatives and are not required to file OGE financial disclosure forms for USDA review for potential conflicts of interest. USDA does, however, require all committee members to submit a USDA form AD-755, which is to provide information about members' current employment and sources of income greater than \$10,000 in the last calendar year, other than their primary employment.

Conflict-of-interest waivers: Not applicable.

Disclosure of waivers to the public: Not applicable.

Steps taken to gather nominations for the committee: According to FSIS officials, the agency solicits nominations through notices in the *Federal Register*, FSIS Constituent Updates (an electronic newsletter sent to over 300 organizations and individuals), the FSIS Web site, and press releases. Officials said these notices serve to reach interested parties and stakeholders—that is, persons from state and federal governments, industry, consumer groups, and academia.

Criteria used to balance the committee: According to FSIS officials, the most important factor used to balance the committee is the expertise identified in the charter: microbiology, risk assessment, epidemiology, public health, food science, and other relevant disciplines. Membership is

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also balanced in terms of points of view by the approximately equal proportions of members appointed from government, industry, and academia. Committee staff also tries to balance committee membership in terms of demographic indicators, such as ethnicity and gender, as well as in terms of geographical distribution.

External feedback on proposed committee membership: None sought.

Table 5: Roster of the National Advisory Committee on Microbiological Criteria for Foods with the Primary Employers and Areas of Expertise as of December 2003

Committee member	Primary employer	Areas of expertise
Academic institutions		
Dr. Larry Beuchat	University of Georgia, Center for Food Safety and Quality Enhancement	Food science
Dr. Catherine Donnelly	University of Vermont, Department of Nutrition and Food Science	Food microbiology and <i>Listeria</i>
Dr. Stephanie Doores	Pennsylvania State University, Department of Food Science	Food science, especially dairy science
Dr. Lee-Ann Jaykus	North Carolina State University	Microbiology and microbial risk assessment
Dr. Carol Maddox	University of Illinois, College of Veterinary Medicine	Veterinary microbiology
Dr. Eli Perencevich	University of Maryland School of Medicine	Public Health
Dr. John Sofos	Colorado State University, Department of Animal Science	Microbiology and <i>E. coli</i>
Companies or industry-affiliated organizations		
Dr. Gary Ades	Most recently employed by Foster Farms	Food safety and quality assurance
Mr. Dane Bernard	Keystone Foods LLC	Food production, food processing, CODEX, ^a and HACCP ^b
Dr. Peggy Cook	Tyson Foods, Inc.	Food microbiology, food chemistry, serology, microbial genetics, and management
Dr. Mahipal Kunduru	Dole Fresh Vegetables, Inc.	Food safety and microbiology
Dr. Roberta Morales	Research Triangle Institute	Microbiology, veterinary medicine, and risk assessment
Ms. Virginia Scott	National Food Processors Association	Foodborne disease bacteria, microbiology, extended shelf life of refrigerated foods, and food safety
Dr. Robert Seward	American Meat Institute	Food microbiology
Dr. Katherine Swanson	Most recently employed by General Mills, Inc.	Food production and food microbiology
Dr. David Theno	Jack in the Box, Inc.	HACCP ^b and animal science

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(Continued From Previous Page)

Committee member	Primary employer	Areas of expertise
Dr. R. Bruce Tompkin	ConAgra Refrigerated Foods (retired)	Microbiology and food safety
Federal, state, and foreign government agencies		
Dr. David Acheson	U.S. Department of Health and Human Services, Food and Drug Administration	<i>E. coli</i> , public health, and medicine
Dr. Frances Downes	Michigan Department of Community Health	Public health and laboratory food testing
Dr. Daniel Engeljohn	U.S. Department of Agriculture Food Safety and Inspection Service	Animal science, meat science, and HACCP ^b
Dr. Jeff Farrar	California Department of Health Services	Public health, epidemiology, and veterinary medicine
Mr. Spencer Garrett	U.S. Department of Commerce National Marine Fisheries Service	Food hygiene, HACCP, ^b and seafood public health
Dr. Patricia Griffin	U.S. Department of Health and Human Services, Centers for Disease Control and Prevention	Epidemiology
Dr. Robin King	U.S. Army Veterinary Corps	Veterinary science and food microbiology
Dr. John Kvenberg	U.S. Department of Health and Human Services, Food and Drug Administration	HACCP, ^b risk management, and <i>Listeria</i> control
Dr. Anna Lammerding	Health Canada	Risk assessment
Dr. John Luchansky	U.S. Department of Agriculture, Agricultural Research Service	Food microbiology and toxicology
Ms. Angela Ruple	U.S. Department of Commerce National Seafood Inspection Laboratory	Food science and microbiology
Dr. Donald Zink	U.S. Department of Health and Human Services, Food and Drug Administration	Food microbiology, food science, food safety, infectious diseases, and epidemiology

Source: USDA.

^aCODEX: Codex Alimentarius Commission. The Codex Alimentarius Commission was created in 1963 by the Food and Agriculture Organization (FAO) and the World Health Organization (WHO) of the United Nations to develop food standards, guidelines, and related texts, such as codes of practice under the Joint FAO/WHO Food Standards Program. The main purposes of this program are protecting the health of consumers and ensuring fair trade practices in the food trade and promoting coordination of all food standards work undertaken by international governmental and nongovernmental organizations.

^bHACCP: Hazard Analysis and Critical Control Point. HACCP is a systematic program for preventing hazards that could cause foodborne illnesses by applying science-based controls from raw material to finished products. The program was first developed for the space program and currently is being adopted by FDA and USDA.

Information on the Department of Energy's Biological and Environmental Research Advisory Committee

This appendix contains information about the Biological and Environmental Research Advisory Committee, which is managed by Energy staff in the Office of Biological and Environmental Research. The members are appointed by the Secretary of Energy.

Purpose of the committee: The advisory committee reviews and makes recommendations on Energy's biological and environmental research program, addressing issues such as genomics, the health effects of low-dose radiation, DNA sequencing, medical sciences, environmental remediation, and climate change research. In addition to reviewing scientific issues, the committee provides advice on long-range plans and priorities and the appropriate levels of funding.

Number of members: 23 (see table 6).

Type of appointment: Representative.

Conflict-of-interest reviews: Because the members are appointed as representatives, they are not required to file OGE financial disclosure forms for Energy review for potential conflicts of interest.

Conflict-of-interest waivers: Not applicable.

Disclosure of waivers to the public: Not applicable.

Steps taken to gather nominations for the committee: According to the committee's designated federal official, the department received nominations from agency staff in the Office of Science.

Criteria used to balance the committee: According to the committee's designated federal official, the primary criterion used to balance the committee is expertise. He also considers gender, ethnicity, and geography and tries to achieve a balance of representatives from industry, academia, and the national laboratories.

External feedback on proposed committee membership: None sought.

Appendix IV
Information on the Department of Energy's
Biological and Environmental Research
Advisory Committee

Table 6: Roster of the Biological and Environmental Research Advisory Committee with the Primary Employers and Areas of Expertise as of December 30, 2003

Committee member	Primary employer	Area of expertise
Colleges, universities, and medical centers		
Keith Hodgson, Ph.D (chair)	Stanford University	Structural biology
James Adelstein, Ph.D.	Harvard Medical School	Education, health risk, and medicine
Michelle Broido, Ph.D.	University of Pittsburgh	Atmospheric science, ecology, education, environmental remediation, global change, and structural biology
David Burgess, Ph.D.	Boston College	Developmental and molecular biology and education
Carlos Bustamante, Ph.D.	University of California at Berkeley	Bioengineering and molecular and structural biology
Charles DeLisi, Ph.D.	Boston University	Bioengineering, biomedical science, biotechnology, computational and molecular biology, education, genomics, mathematics, and informatics
Raymond Gesteland, Ph.D.	University of Utah	Biotechnology, education, genomics, and molecular biology
Willard Harrison, Ph.D.	University of Florida	Analytical chemistry
Steven Larson, M.D.	Memorial Sloan-Kettering Cancer Center	Biomedical science, education, and medicine
Jill Merisov, Ph.D.	Massachusetts Institute of Technology Center for Genome Research	Computational biology, computer modeling, genomics, mathematics, and informatics
Louis Pitelka, Ph.D.	University of Maryland Center for Environmental Science	Ecology and global change
Janet Smith, Ph.D.	Purdue University	Computational and structural biology
James Tiedje, Ph.D.	Michigan State University	Environmental remediation, biotechnology, microbiology, and molecular biology
Barbara Wold, Ph.D.	California Institute of Technology	Biotechnology, developmental and molecular biology, and genomics
Companies		
Jonathan Greer, Ph.D.	Abbot Laboratories	Biotechnology and computational and structural biology
James Mitchell, Ph.D.	Lucent Technologies	Analytical chemistry
Nonprofit research institution		
Leroy Hood, Ph.D.	Institute for Systems Biology	Bioengineering, biomedical sciences, biotechnology, developmental and molecular biology, and genomics
Professional associations		
Eugene Bierly, Ph.D.	American Geophysical Union	Atmospheric science and global change
Richard Hallgren, Ph.D.	American Meteorological Society	Computer modeling and global change

**Appendix IV
Information on the Department of Energy's
Biological and Environmental Research
Advisory Committee**

(Continued From Previous Page)

Committee member	Primary employer	Area of expertise
Roger McClellan, D.V.M.	Chemical Industry Institute of Toxicology	Health risk and toxicology
DOE national laboratory		
Lisa Stubbs, Ph.D.	Lawrence Livermore National Laboratory	Biotechnology, genomics, and molecular biology
Federally funded research organization		
Warren Washington, Ph.D.	National Center for Atmospheric Research	Computer modeling and global change
Other		
Robert Fri	Resources for the Future; National Academy of Sciences	Education and global change

Source: Department of Energy.

Information on the Environmental Protection Agency's Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel

This appendix contains information about the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel. The committee is managed by EPA staff, and the members are appointed by the Deputy Administrator of EPA.

Purpose of the committee: The FIFRA Scientific Advisory Panel provides advice, information, and recommendations on pesticides and pesticide-related issues regarding the impact of regulatory actions on health and the environment of regulatory actions. The objectives include providing advice and recommendations on (1) scientific studies and issues in the form of a peer review, (2) methods to ensure that pesticides do not cause “unreasonable adverse effects on the environment,” and (3) guidelines to improve the effectiveness and quality of scientific testing and of data submitted to EPA.

Number of members: There are 7 permanent members on the standing committee (see table 7). These members are appointed for 4-year terms and serve on a number of individual peer review panels. The FIFRA Scientific Advisory Panel establishes between 5 and 7 peer review panels each year to address a variety of specific topics.¹ These committees are comprised of permanent members and ad hoc expert consultants. Meeting panels typically consist of approximately 15 members.

Type of appointment: Special government employees.

Conflict-of-interest reviews: As special government employees, committee members are required to file financial disclosure forms. As discussed in this report, the EPA form 3110-48, an OGE-approved alternative disclosure form, is used. In addition, as also is discussed in this report, FIFRA staff interview potential candidates using a structured interview format to assess the interest, availability, and appropriateness of candidates to serve on individual committees. The structured interview includes a discussion of financial conflicts of interest (statutory conflicts and appearance problems), impartiality, and a review of the information that is requested on the form 3110-48.

Conflict-of-interest waivers: No waivers have been granted to current members.

¹In this review, we examined the FIFRA Scientific Advisory Panel on atrazine (see table 8).

Disclosure of waivers to the public: Not applicable.

Steps taken to gather nominations for the committee: The Federal Insecticide, Fungicide, and Rodenticide Act of 1977 requires the EPA Deputy Administrator to select the 7 members of the standing Scientific Advisory Panel from nominees provided by NIH and the National Science Foundation. The committee's management also routinely solicits nominations for ad hoc expert consultants on the agency's Web site and through notices in the *Federal Register*.

Criteria used to balance the committee: Technical expertise is the primary criterion used to balance the FIFRA Scientific Advisory Panel committees. The FIFRA Scientific Advisory Panel defines balanced membership as including the necessary areas of technical expertise, different scientific perspectives within each technical discipline, and the collective breadth of experience needed to address the agency's charge.

External feedback on proposed committee membership: As required by statute, the advisory committee's management posts the names, professional affiliations, and selected biographical data of nominees proposed for appointment as permanent members in the *Federal Register* and on its Web site for public comment, providing instructions on how to submit comments regarding the nominees. Unlike the standing committee, nominees considered for temporary service at particular meetings are not subject to public comment prior to their appointment.

Appendix V
Information on the Environmental
Protection Agency's Federal Insecticide,
Fungicide, and Rodenticide Act Scientific
Advisory Panel

Table 7: Roster of the Standing FIFRA Scientific Advisory Panel with the Primary Employers and Areas of Expertise as of December 2003

Committee member	Primary employer	Areas of expertise
Universities and medical centers		
Stuart Handwerger M.D.	Cincinnati Children's Hospital Medical Center	Endocrinology, toxicology, and veterinary medicine
Steven G. Heeringa, Ph.D. ^a	University of Michigan, Institute for Social Research	Biostatistics
Gary E. Isom, Ph.D. ^a	Purdue University, School of Pharmacy and Pharmacal Sciences	Neurotoxicology and clinical pediatric research
Fumio Matsumura, Ph.D. ^a	University of California at Davis, Institute of Toxicology and Environmental Health	Biochemical toxicology
Mary Anna Thrall, D.V.M. ^a	Colorado State University, Department of Microbiology, Immunology and Pathology	Veterinary pathology and veterinary clinical pathology
Stephen Roberts, Ph.D. ^a	University of Florida, Center for Environmental & Human Toxicology	Human toxicology
Federal agency		
Christopher Portier, Ph.D.	National Institutes of Health, National Institute of Environmental Health Sciences	Human health risk assessment

Source: EPA.

^aMembers participated in the June 17 to 20, 2003, meeting on atrazine.

Appendix V
Information on the Environmental
Protection Agency's Federal Insecticide,
Fungicide, and Rodenticide Act Scientific
Advisory Panel

Table 8: Roster of the Temporary (Ad Hoc) Members Serving on the June 17 to 20, 2003, Meeting on Atrazine

Committee member	Primary employer	Area of expertise
Universities		
Joel Coats, Ph.D.	Iowa State University, Department of Entomology	Environmental toxicology (fate and effects of pesticides in environment)
Robert J. Denver, Ph.D.	The University of Michigan, Department of Ecology and Evolutionary Biology	Amphibian development
James Gibbs, Ph.D.	State University of New York - Syracuse	Amphibian biological monitoring, conservation biology, and herpetology
Sherril L. Green, D.V.M., Ph.D.	Stanford University School of Medicine	<i>Xenopus</i> husbandry ^a
Darcy B. Kelley, Ph.D.	Columbia University	Developmental biology
Gerald A. LeBlanc, Ph.D.	North Carolina State University	Aquatic toxicology
Carl Richards, Ph.D.	University of Minnesota Duluth, Minnesota Sea Grant College Program	Aquatic biology
David Skelly, Ph.D.	Yale University, School of Forestry and Environmental Studies	Field amphibian ecology
Foreign organizations		
Peter Delorme, Ph.D.	Health Canada (Canadian Federal Government)	Environmental toxicology (aquatic) and environmental risk assessment
Werner Kloas, Ph.D.	Department of Inland Fisheries, Leibniz-Institute of Freshwater Ecology and Inland Fisheries, Berlin, Germany	<i>Xenopus</i> ^a development and anuran (frog/toad) endocrinology

Source: EPA.

^a*Xenopus laevis* is a species of frog that, along with the mouse, rat, fruit fly, and other species of animals and plants, serves as a model organism for biomedical research.

Information on the Department of Health and Human Services's Advisory Committee on Human Research Protections

This appendix contains information about the Secretary's Advisory Committee on Human Research Protections. The committee replaced the National Human Research Protections Advisory Committee, established in 2000, whose charter HHS did not renew when it expired in 2002.¹ HHS officials chose to revise the charter of the initial committee primarily by adding populations potentially affected by human research protections, appointing new members to provide advice to the Secretary. The committee is sponsored and generally managed by the Office of Public Health Service, but the members are appointed by the HHS Secretary.² The nominating and selection processes in 2002 and 2003 were managed by the HHS Office of White House Liaison.

Purpose of the committee: According to its charter, the committee is to advise the HHS Secretary and the Assistant Secretary for Health on matters pertaining to the continuance and improvement of functions within the authority of HHS directed toward protections for human subjects in research. Specifically, the committee is to provide advice relating to the responsible conduct of research involving human subjects with particular emphasis on

- special populations, such as neonates and children, prisoners, and the decisionally impaired;
- pregnant women, embryos, and fetuses;
- individuals and populations in international studies;
- populations in which there are individually identifiable samples, data, or information; and
- investigator conflicts of interest.

In addition, the committee is responsible for reviewing selected ongoing work and planned activities of the Office of Human Research Protections

¹As noted in this report, FACA requires that advisory committee charters expire at the end of 2 years unless renewed by the agency.

²HHS and its components, such as CDC, FDA, and NIH, had 247 federal advisory committees in fiscal year 2003. While the heads of the various component agencies generally appoint committee members, according to the Director of the Office of the White House Liaison, the HHS Secretary appoints the members to about 30 percent of the committees.

and other offices/agencies within HHS that are responsible for human subjects protection. These evaluations may include but are not limited to a review of assurance systems, the application of minimal research risk standards, the granting of waivers, education programs sponsored by the Office of Human Research Protections, and the ongoing monitoring and oversight of institutional review boards and the institutions that sponsor research.

Number of members: 11 (see table 9).

Type of appointment: Special government employees.

Conflict-of-interest reviews: As special government employees, committee members are required to file OGE financial disclosure forms for HHS's review for potential conflicts of interest. These forms were reviewed by the cognizant committee management officer who consulted with the designated federal official and the Office of General Counsel ethics division. In June 2003, after the members had been appointed to the committee, the committee management officer identified some potential conflicts of interest stemming from investments that she and the Office of General Counsel believed required mitigation, such as waivers. She also requested that the designated federal official determine whether other potential conflicts required waivers if the appointed members work for institutions involved in research activities/studies/projects that may impact human research protections.

Conflict-of-interest waivers: Waivers were not issued before the committee's first meeting in July 2003. The nine waivers granted were finalized on January 16, 2004.

Disclosure of waivers to the public: HHS policies and procedures do not address the disclosure of waivers to the public. HHS does not proactively disclose the issuance of waivers to the public at committee meetings.

Steps taken to gather nominations for the committee: According to the Director of the Office of White House Liaison, she asked a couple of individuals at the Association of American Medical Colleges for nominations for this committee. The Director said that an Office of Public Health Service staff member familiar with the previous committee also assisted in identifying nominees from the previous slate to serve on the new committee. In addition, she said that HHS received self-nominations

Appendix VI
Information on the Department of Health and
Human Services's Advisory Committee on
Human Research Protections

and also used names from NIH's database, particularly the group that was solicited for the Secretary's Advisory Committee on Genetics, Health, and Society.

Criteria used to balance the committee: According to the agency official responsible for nominating members for the committee, the factors she considered in balancing the committee were expertise along with geographic, gender, and racial diversity. After HHS announced the committee membership in January 2003, the National Organization for Rare Disorders and some members of the predecessor advisory committee expressed concern that the regulated research industry was overrepresented and that there were no consumer or patient advocates on the committee. A week later, HHS added a member with a background in patient advocacy.

External feedback on proposed committee membership: None sought.

Table 9: Roster of the Secretary's Advisory Committee on Human Research Protections with the Primary Employers and Areas of Expertise as of December 2003

Committee member	Primary employer	Area of expertise
Medical and academic institutions		
Dr. Celia B. Fisher	Fordham University	Bioethics
Dr. Nigel Harris	Morehouse School of Medicine	Rheumatology and antiphospholipid research
Dr. Robert G. Hauser	Abbott Northwest Hospital	Cardiology
Dr. Nancy L. Jones	Wake Forest University School of Medicine	Biochemistry and pathology
Ms. Susan Kornetsky	Children's Hospital, Boston, MA	Clinical research compliance and public health
Dr. Mary Lake Polan	Stanford University School of Medicine	Reproductive endocrinology and infertility
Dr. Ernest D. Prentice	University of Nebraska Medical Center	Cell biology, anatomy, and regulatory Compliance
Company, law firm, and professional organization		
Mr. Thomas Adams	Association of Clinical Research Professionals	Medical trade association management
Mr. Mark Barnes	Ropes & Gray Law Firm	Health care law and Health Insurance Portability and Accountability Act of 1996 regulation and compliance
Dr. Felix A Khin-Maung-Gyi	Chesapeake Research Review, Inc.	Human subject protection, bioethics, and pharmacy
Patient advocacy organization		
Dr. Susan L. Weiner	The Children's Cause, Inc.	Developmental psychology

Source: HHS.

Information on the Centers for Disease Control and Prevention's Advisory Committee on Childhood Lead Poisoning Prevention

This appendix contains information about the Advisory Committee on Childhood Lead Poisoning Prevention. The committee is sponsored and generally managed by CDC, but the members are appointed by the HHS Secretary.¹ The nominating and selection processes in 2002 and 2003 were managed by the HHS Office of White House Liaison.

Purpose of the committee: The Advisory Committee on Childhood Lead Poisoning Prevention provides advice and guidance to the Secretary; the Assistant Secretary for Health; and the CDC Director, regarding new scientific knowledge and technological developments and their practical implications for childhood lead poisoning prevention efforts. The committee also reviews and reports on childhood lead poisoning prevention practices and recommends improvements in national childhood lead poisoning prevention efforts.

Number of members: 12 (see table 10).

Type of appointment: Special government employees.

Conflict-of-interest reviews: As special government employees, committee members are required to file OGE financial disclosure forms for HHS and CDC review for potential conflicts of interest. CDC's designated federal official, a conflict-of-interest specialist in the CDC's Committee Management Office, and the director of CDC's Management Analysis and Services Office reviewed the completed forms for the current members of the committee.

Conflict-of-interest waivers: None granted to current members.

Disclosure of waivers to the public: Not applicable.

Steps taken to gather nominations for the committee: According to the Director of the Office of White House Liaison and the designated federal official for the committee, nominations were generally solicited informally, such as during conversations. According to the Director, HHS received nominations from the Dean of the St. Francis Hospital in Tulsa, Oklahoma; the Chancellor of Columbia University; Senator Thad Cochran; and the Deputy Secretary's office. They also used the Internet to search for

¹See appendix 6, footnote 2.

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Information on the Centers for Disease
Control and Prevention's Advisory
Committee on Childhood Lead Poisoning
Prevention

candidates associated with successful lead poison reduction programs in large cities.

Criteria used to balance the committee: According to the Office of White House Liaison, the department and agency worked to find potential appointees and balance the committee on the basis of expertise as well as gender, ethnicity, and geography to the extent these additional factors did not impinge on the department's ability to pick qualified members.

External feedback on proposed committee membership: None sought.

Table 10: Roster of the Advisory Committee on Childhood Lead Poisoning Prevention with the Primary Employers and Areas of Expertise as of December 2003

Committee member	Primary employer	Area of expertise
Medical institutions		
William Banner, M.D.	The Children's Hospital at St. Francis in Tulsa OK	Toxicology, critical care medicine, and pediatrics
Helen Binns, M.D., M.P.H.	Feinberg School of Medicine, Northwestern University	Pediatric lead poisoning detection and public health
Carla Campbell, M.D., M.S.	Children's Hospital of Philadelphia	Lead poisoning and toxicology
Ing Kang Ho, Ph.D.	University of Mississippi Medical Center, School of Graduate Studies in the Health Sciences	Pharmacology and toxicology
Sergio Piomelli, M.D.	Columbia University College of Physicians and Surgeons	Pediatrics
State and local health agencies		
Walter S. Handy, Jr., Ph.D.	Cincinnati Health Department	Clinical psychology and public health policy
Jessica Leighton, Ph.D., M.P.H.	New York City Department of Health and Mental Hygiene	Public policy and childhood lead poisoning
Tracey Lynn, D.V.M., M.S.	Alaska Department of Health Services	Environmental public health
Kevin U. Stephens, Sr., M.D., J.D.	Department of Health, City of New Orleans, LA	Obstetrics and gynecology, public health, medicine, and law
Private medical practice		
Catherine M. Slota-Varma, M.D.	Pediatrician in private practice	Pediatrics
Private nonprofit organization		
Richard Hoffman, M.D.	Director, Planned Parenthood of Rocky Mountains	Public health
University		
Kimberly Thompson, Sc.D.	Harvard University School of Public Health	Risk analysis and health policy

Source: HHS.

Information on the Food and Drug Administration's Food Advisory Committee

This appendix provides information about the Food Advisory Committee. The committee is managed by FDA. The members are appointed by FDA's Associate Commissioner for External Relations.

Purpose of the committee: The committee is to provide advice to the Director, Center for Food Safety and Applied Nutrition, and to the Commissioner of Food and Drugs and other appropriate officials as needed, on emerging food safety, food science, nutrition, and other food-related health issues that FDA considers of primary importance for its food and cosmetics programs. The committee may be charged with reviewing and evaluating available data and making recommendations on matters such as those relating to the following: broad scientific and technical food- or cosmetic-related issues, the safety of new foods and food ingredients, the labeling of foods and cosmetics, nutrient needs and nutritional adequacy, and safe exposure limits for food contaminants. The committee may also be asked to provide advice and make recommendations on ways of communicating to the public the potential risks associated with these issues and on approaches that might be considered for addressing the issues.

Number of members: 25 (see table 11).

Type of appointment: With the exception of nonvoting industry representatives, all committee members are special government employees.

Conflict-of-interest reviews: As special government employees, committee members are required to file the OGE confidential financial disclosure form 450. Members are required to update this form annually. In addition, for meetings that involve particular matters of general or specific applicability, members also complete an FDA form 3410, which requires them to report interests directly related to the topic of discussion. The designated federal official does an initial screening and officials from FDA's Ethics and Integrity Branch clear the members for conflicts of interest.

Conflict-of-interest waivers: During the last year, waivers were granted seven times for members to participate in specific meetings. FDA granted the waivers on the basis that the need for these individuals' expertise outweighed the potential conflicts of interest.

Disclosure of waivers to the public: The type of waiver and the names of members who have received waivers for particular meetings are read into the record by the designated federal officer at the beginning of the public meeting. Public disclosure of the substance of waivers issued is only required in cases where the meetings deal with particular matters of specific applicability. When such waivers are issued, the members who receive them are asked to sign a consent document authorizing FDA to provide a description of the nature and the magnitude of the financial interests being waived for the public record.

Steps taken to gather nominations for the committee: FDA solicits nominations through notices in the *Federal Register*. According to the committee's designated federal official and an agency document identifying the sources of the nominations, the agency obtained nominations from (1) FDA and HHS officials; (2) interest groups and trade associations and other interested parties, including the American Society for Nutritional Services, the Center for Science in the Public Interest, the Association of Food and Drug Officials, and officials at the Center for Health Policy at the University of Oklahoma and the Massachusetts Institute of Technology; and (3) individuals who nominated themselves in response to the *Federal Register* notice.

Criteria used to balance the committee: Committee managers reported the following five criteria used to achieve balance: (1) scientific expertise representing a range of scientific interpretation; (2) demographic characteristics, including geographic distribution, gender, and ethnicity; (3) differing levels of experience on advisory committees; (4) stakeholder representation (e.g., consumers, industry, and academicians); and (5) membership on advisory committees that is used to help ensure that the agency has balance by not repeatedly appointing a limited set of people either for a particular committee or for various committees the agency has on related topics. Temporary voting members may be added to enhance balance.

External feedback on proposed committee membership: None sought.

Appendix VIII
Information on the Food and Drug
Administration's Food Advisory Committee

Table 11: Roster of the Food Advisory Committee with the Primary Employers and Areas of Expertise as of June 3, 2003

Committee member	Primary employer	Area of expertise
Universities and medical centers		
Alex D.W. Acholonu, Ph.D.	Alcorn State University	Microbiology and parasitology
Douglas L. Archer, Ph.D.	University of Florida, Department of Food Science & Human Nutrition	Microbiology, food science, and food law
Jonathan A. Arias, Ph.D.	University of Maryland, Center for Biosystems	Molecular biology
Fred McDaniel Atkins, M.D.	National Jewish Medical and Research Center	Pediatrics and allergies
Jeffrey Blumberg, Ph.D.	Tufts University	Pharmacology and biostatistics
Bob B. Buchanan, Ph.D.	University of California, Berkeley, Department of Plant and Microbial Biology	Molecular plant biology
Francis Fredrick Busta, Ph.D.	University of Minnesota, Department of Food Science and Nutrition	Food science and microbiology
Nancy M. Childs, Ph.D.	Saint Joseph's University	Food marketing
Johanna Dwyer, Ph.D.	Tufts University Schools of Medicine and Nutrition	Public health and nutrition
Lawrence J. Fischer, Ph.D.	Michigan State University, Institute for Environmental Toxicology	Toxicology
George M. Gray, Ph.D.	Harvard University, School of Public Health	Risk analysis and toxicology
Rachel K. Johnson, Ph.D., M.P.H., R.D.	University of Vermont, Department of Nutrition and Food Sciences	Pediatrics and nutrition
Anne R. Kapuscinski, Ph.D.	University of Minnesota, Department of Fisheries and Wildlife	Conservation biology
Ken Lee, Ph.D.	Ohio State University, Department of Food Science	Food science and processing
Harihara Mehendale, Ph.D.	University of Louisiana at Monroe, College of Pharmacy	Toxicology
Sanford A. Miller, Ph.D. (Chair)	Virginia Polytechnic and State University	Chemistry, toxicology, and food science
Abigail A. Salyers, Ph.D.	University of Illinois at Urbana-Champaign	Microbiology and gene transfer
Michael W. Shannon, Ph.D.	Children's Hospital, Boston, MA	Pediatrics and toxicology
J. Antonio Torres, Ph.D.	Oregon State University	Food science and processing
Steven Zeisel, MD, Ph.D.	University of North Carolina, School of Health & Medicine	Pediatrics
Nonprofit associations		
Annette Dickinson, Ph.D. (industry representative)	Council for Responsible Nutrition	Dietary supplements
Goulda Angella Downer, Ph.D. (consumer representative)	Metroplex Health and Nutrition Services	Nutrition and epidemiology
Douglas Gurian-Sherman, Ph.D. (consumer representative)	Center for Science in the Public Interest	Genetic engineering

Appendix VIII
Information on the Food and Drug
Administration's Food Advisory Committee

(Continued From Previous Page)

Committee member	Primary employer	Area of expertise
State agency		
Marion H. Fuller, D.V.M.	Florida Department of Agriculture, Division of Food Safety	Veterinary medicine federal-state relations
Industry association		
Brandon Scholz	Wisconsin Grocers Association	Industry representative

Source: USDA.

Information on the National Institutes of Health's Scientific Advisory Committee on Alternative Toxicological Methods

This appendix contains information about the Scientific Advisory Committee on Alternative Toxicological Methods, which is sponsored and managed by NIH. Members are appointed by the Director of the National Institute of Environmental Health Sciences.

Purpose of the committee: The committee provides advice to the Director of the National Institute of Environmental Health Sciences (NIEHS); the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM); and the National Toxicology Program Center regarding statutorily mandated functions, including

- reviewing and evaluating new; revised; or alternative test methods, including batteries of tests and test screens that may be acceptable for specific regulatory uses;
- facilitating appropriate interagency and international harmonization of acute or chronic toxicological test protocols that encourage the reduction, refinement, or replacement of animal test methods;
- facilitating and providing guidance on the development of validation criteria; validation studies; and processes for new, revised, or alternative test methods and helping to facilitate the acceptance of such scientifically valid test methods and awareness of accepted test methods by federal agencies and other stakeholders; and
- submitting ICCVAM test recommendations for the test methods reviewed by ICCVAM, through expeditious transmittal by the HHS Secretary (or the designee of the Secretary), to each appropriate federal agency, along with the identification of specific agency guidelines; recommendations; or regulations for test methods, including batteries of tests and test screens, for chemicals or a class of chemicals within a regulatory framework that may be appropriate for scientific improvement, while seeking to reduce, refine, or replace animal test methods.

The committee also provides advice to the Director of the NIEHS and the National Toxicology Program Center on activities and directives relating to the National Toxicology Program Center, such as on priorities and opportunities for alternative test methods that may provide improved prediction of adverse health effects compared with currently used methods or advantages in terms of reduced expense and time, reduced animal use, and reduced animal pain and distress.

Number of members: 15 (see table 12).

Type of appointment: Special government employees.

Conflict-of-interest reviews: As special government employees, committee members are required to file OGE financial disclosure forms for review for potential conflicts of interest. The NIH committee management officer performed a first-level review of the financial disclosure forms, followed by a second-level review by the designated federal officer. The NIH's Deputy Ethics Counselor performed the final review.

Conflict-of-interest waivers: Fourteen of 15 members received waivers because NIH determined that the need for their expertise outweighed the potential conflicts. One of the 15 members received a waiver because the conflict was deemed not significant.

Disclosure of waivers to the public: According to the designated federal officer, the issuance of waivers to committee members was not disclosed to the public. For example, the waivers were not discussed at any committee meetings. According to the NIH committee management officer, the agency sends its waivers to the HHS Ethics Counsels assigned to NIH, who then sends them to OGE.

Steps taken to gather nominations for the committee: The Director of the Environmental Toxicology Program, NIEHS, asked the members of the ICCVAM for nominations to the advisory committee and also asked for nominations from former members and ad hoc advisors of the committee. The Director also requested nominations from two stakeholder groups that regularly attend committee meetings, the Doris Day Animal League and the People for the Ethical Treatment of Animals.

Criteria used to balance the committee: According to the committee management officer and the designated federal officer, the legislation that created the committee gives direction regarding membership that focuses on expertise and work affiliations, and NIH uses these factors to achieve committee balance. Specifically, the legislation calls for members to come from an academic institution; a state government agency; an international regulatory body; or any corporation developing or marketing new, revised, or alternative test methodologies, including contract laboratories. The legislation also specifies that there shall be at least one knowledgeable representative having a history of expertise, development, or evaluation of new, revised, or alternative test methods from each of the following

categories: (1) personal care, pharmaceutical, industrial chemicals, or agricultural industry; (2) any other industry that is regulated by one of the federal agencies on ICCVAM; and (3) a national animal protection organization established under section 501(c)(3) of the Internal Revenue Code of 1986. The committee management officer also told us that NIH considered ethnicity, gender, and geography in balancing the committee membership.

External feedback on proposed committee membership: None sought.

Appendix IX
Information on the National Institutes of
Health's Scientific Advisory Committee on
Alternative Toxicological Methods

Table 12: Roster of the Scientific Advisory Committee on Alternative Toxicological Methods with the Primary Employers, and Areas of Expertise as of December 30, 2003

Committee member	Primary employer	Area of expertise
Universities		
Dr. Daniel Acosta, Jr.	University of Cincinnati, College of Pharmacy	<i>In vitro</i> toxicology, pharmacology, and development of <i>in vitro</i> cellular models
Dr. Nancy Flournoy	University of Missouri-Columbia, Department of Statistics	Biostatistics, applied stochastic processes, and statistical theory
Dr. Alan M. Goldberg	Johns Hopkins University, Center for Alternatives to Animal Testing, Bloomberg School of Public Health	Neurotoxicology, <i>in vitro</i> toxicology, and alternative models
Dr. Sidney Green, Jr.	Howard University, Department of Pharmacology, College of Medicine	Pharmacology, genetic toxicology, and regulatory toxicology
Dr. A. Wallace Hayes	Harvard University, School of Public Health	General toxicology, biochemical toxicology, and <i>in vitro</i> models
Dr. Nancy A. Monteiro-Riviere	North Carolina State University, Department of Clinical Sciences, College of Veterinary Medicine	Dermal toxicology, biochemical toxicology, and <i>in vitro</i> models
Dr. Steven H. Safe	Texas A & M University, Departments of Veterinary Physiology and Pharmacology, College of Veterinary Medicine	Environmental estrogens, toxicology, and biochemistry
Dr. Carlos Sonnenschein	Tufts University School of Medicine, Department of Anatomy and Cellular Biology	Environmental toxicology, medicine, environmental estrogens, and reproductive toxicology
Companies		
Dr. Jack H. Dean	Sanofi-Synthelabo, Inc.	Molecular biology, regulatory toxicology, toxicogenomics, and immunotoxicology
Dr. Rodger D. Curren	Institute for In Vitro Sciences, Inc.	<i>In vitro</i> toxicological testing
Dr. Jacqueline H. Smith	Chesapeake Consulting Team	Pharmacology, environmental toxicology, regulatory toxicology, and the petroleum industry
Nonprofit associations		
Dr. Martin L. Stephens	The Humane Society of the United States	Animal welfare and environmental toxicology
Dr. Peter Theran	Massachusetts Society for the Prevention of Cruelty to Animals/American Humane Education Society	Internal medicine, laboratory animal medicine, animal welfare, and comparative medicine
State agency		
Dr. Calvin C. Willhite	State of California, Department of Toxic Substance Control	Reproductive toxicology, pharmacology, risk assessment and management, and regulatory toxicology
Other		
Dr. Katherine A. Stitzel	Veterinarian (Retired)	Acute toxicity, <i>in vitro</i> methods, and regulatory toxicology

Source: HHS.

Information on the Department of the Interior's U.S. Geological Survey's Scientific Earthquake Studies Advisory Committee

This appendix provides information about the Scientific Earthquake Studies Advisory Committee. The committee is managed by the U.S. Geological Survey (USGS), and members are appointed by the Secretary of the Interior.

Purpose of the committee: The advisory committee was established under the Earthquake Hazards Reduction Authorization Act of 2000 (Pub. L. No. 106-503, Title II) to advise the Director of USGS on matters relating to the USGS's participation in the National Earthquake Hazards Reduction Program, a multiagency strategic program to reduce risks to lives and property resulting from earthquakes. The committee is to provide advice on the USGS Earthquake Hazards Reduction Program's roles, goals, and objectives; capabilities and research needs; guidance on achieving major objectives; and establishing and measuring performance goals.

Number of members: 9 (see table 13).

Type of appointment: Representative.

Conflict-of-interest reviews: In 2001, the committee members were appointed as representatives and were not required to file OGE financial disclosure forms for Interior review for potential conflicts of interest. In January 2004, Interior reevaluated the appointments and determined that the members should be appointed as special government employees. Interior said that the committee would not conduct further meetings until the appointments had been changed.

Conflict-of-interest waivers: Not applicable in 2001.

Disclosure of waivers to the public: Not applicable.

Steps taken to gather nominations for the committee: The Earthquake Hazards Reduction Authorization Act of 2000 requires the Director of USGS to obtain nominations from the National Academy of Sciences, professional societies, and other appropriate organizations. The Director obtained nominations from the academy, the Geological Society of America, the Seismological Society of America, the American Society of Civil Engineers, the American Institute of Professional Geologists, the American Geophysical Union, and the Earthquake Engineering Research Institute.

Appendix X
Information on the Department of the
Interior's U.S. Geological Survey's Scientific
Earthquake Studies Advisory Committee

Criteria used to balance the committee: According to the statute that established the advisory committee, the selection of individuals for the committee is to be based solely on established records of distinguished service and the USGS Director is required to ensure that “a reasonable cross-section of views and expertise is represented.” According to the designated federal official, the primary factor for selection was expertise in fields such as geology, seismology, engineering, and public safety. In addition, according to department officials, the agency also considered gender, geography, and employment sector.

External feedback on proposed committee membership: USGS sought feedback from the National Academies on its slate of proposed members.

Table 13: Roster of the Scientific Earthquake Studies Advisory Committee with the Primary Employers and Areas of Expertise as of December 2003

Committee member	Primary employer	Area of expertise
Universities		
Dr. Daniel P. Abrams	University of Illinois at Urbana-Champaign	Engineering
Dr. Thomas H. Jordan	University of Southern California, Department of Earth Sciences	Seismology, geodynamics, tectonics, geodesy, and marine geology
Dr. Paul Segall	Stanford University, Department of Geophysics	Earthquake physics
Dr. Robert B. Smith	University of Utah, Department of Geology and Geophysics,	Geology
Dr. Sharon L. Wood	University of Texas, Ferguson Structural Engineering Laboratory	Engineering
Companies		
Dr. Lloyd Cluff	Pacific Gas and Electric Company	Earthquake hazard assessment
Mr. Ronald T. Eguchi	ImageCat, Inc.	Earthquake risk analysis
State agencies		
Ms. Mimi Garstang	Missouri Geological Survey	Earthquake hazard analysis in the eastern United States and state-level mitigation policy
Dr. Jonathan G. Price	Nevada Bureau of Mines and Geology	Seismology and earthquake hazard analysis in the western United States.

Source: Interior.

Information on the National Aeronautics and Space Administration's Space Science Advisory Committee

This appendix provides information about the Space Science Advisory Committee. The committee is managed by the Office of Space Science, and members are appointed by NASA's Associate Administrator for Space Science.

Purpose of the committee: The NASA Space Science Advisory Committee is to draw on the expertise of its members and other sources to provide advice and make recommendations to the Administrator of NASA on plans, policies, programs, and other matters pertinent to the agency's space science responsibilities.

Number of members: 17 (see table 14).

Type of appointment: Special government employees.

Conflict-of-interest reviews: NASA uses the OGE form 450 to collect financial information from committee members. The forms are collected and reviewed after the Associate Administrator has concurred with the appointment decisions. The forms 450 are reviewed and approved by the committee's designated federal official and the Office of General Counsel. On the basis of these reviews, the Office of General Counsel sometimes sends cautionary letters to members indicating that they may need to recuse themselves if the committees address matters that relate to their financial interests.

Conflict-of-interest waivers: No current members have waivers.¹

Disclosure of waivers to the public: Not applicable.

Steps taken to gather nominations for the committee: According to the committee's designated federal official, NASA gathered nominations from staff within the agency's Office of Space Science.

Criteria used to balance the committee: The committee's designated federal official told us said that in addition to considering the nominees' areas of expertise relative to the four themes of the Office of Space Science, he also considers their gender, ethnicity, geography, and institutional affiliation.

¹According to an ethics official in NASA's Office of General Counsel, NASA issues very few (five or fewer) waivers each year.

Appendix XI
Information on the National Aeronautics and
Space Administration's Space Science
Advisory Committee

External feedback on proposed committee membership: None sought.

Table 14: Roster of the Space Science Advisory Committee Members with the Primary Employers and Areas of Expertise as of December 30, 2003

Committee member	Primary employer	Area of expertise
Universities		
Dr. David Deamer	University of California at Santa Cruz	Astrobiology
Dr. Jonathan Grindlay	Harvard-Smithsonian Center for Astrophysics	Astrophysics
Dr. Fiona Harrison	California Institute of Technology	Astrophysics
Dr. Roderick Heelis	University of Texas at Dallas	Solar physics
Dr. Garth Illingworth	University of California at Santa Cruz	Astrophysics
Dr. Andrew Klein	Oregon State University	Nuclear engineering
Dr. Jonathan Lunine	University of Arizona	Planetary exploration
Dr. John Mustard	Brown University	Astrobiology
Dr. David Spergel	Princeton University	Astrophysics
Federal research facilities		
Dr. Judith Karpen	U.S. Naval Research Laboratory	Solar physics
Dr. Edward Kolb	Fermi National Accelerator Laboratory	Astrophysics
Dr. Jeremy Mould	National Optical Astronomy Observatory	Astrophysics
Dr. Michelle Thompson	Los Alamos National Laboratory	Sun-earth connections
For profit company		
Dr. Andrew Christensen (chair)	Northrop Grumman Space Technology	Sun-earth connections
Private, nonprofit research organizations		
Dr. Heidi Hammel	Space Science Institute	Planetary science
Mr. Martin Kress	Battelle Memorial Institute	Space policy
Private museum		
Dr. Paul Knappenberger	Adler Planetarium	Education and public outreach

Source: NASA.

Comments from the General Services Administration



GSA Administrator

March 24, 2004

The Honorable David M. Walker
Comptroller General
United States General
Accounting Office
Washington, DC 20548

Dear Mr. Walker:

Enclosed are comments on the draft report entitled "Federal Advisory Committees: Additional Guidance Could Help Agencies Better Ensure Independence and Balance."

GSA agrees that additional guidance and best practices suggestions relating overall to the Federal advisory committee appointment and membership processes could help agencies to ensure that committees are perceived to be independent and have fairly balanced membership. The General Services Administration (GSA) remains committed to these key policy goals of the Federal Advisory Committee Act (FACA) and believes that they should be implemented consistently across the executive branch. GSA also believes that such guidance should be of sufficient detail and clarity to ensure the utmost compliance with FACA and other related or impacted statutes and regulations. GSA is in general accord with the findings in the draft report relating to those areas directly under the purview of GSA.

We are committed to our strong partnership with the Office of Government Ethics (OGE) to address both those areas under OGE's jurisdiction relating to FACA and the appointment and membership processes that are under the decision making authority of individual agencies. GSA will consult frequently with OGE and executive agencies in developing enhanced guidance that will achieve not only the best solutions, but also reflect the consensus of agencies that sponsor a wide variety of advisory committees.

GSA is taking a proactive approach, to include changes to its shared FACA Database management and reporting system, and some activities already are underway. The enclosed comments indicate our overall plan in the major areas of continuing dialogue with

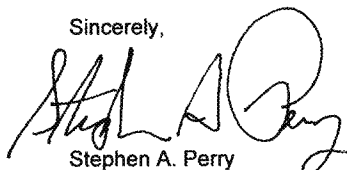
U.S. General Services Administration
1800 F Street, NW
Washington, DC 20405-0002
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OGE, incorporating changes to current interagency training, issuing more detailed guidance to enhance data collection, and improving the agency consultation process with GSA in the establishment of new discretionary Federal advisory committees.

Thank you for the opportunity to comment on the draft report.

Sincerely,



Stephen A. Perry
Administrator

Enclosure

Comments of the General Services Administration on
The General Accounting Office's Draft Report, "Federal Advisory Committees:
Additional Guidance Could Help Agencies Better Ensure Independence and Balance"
(GAO-04-328)

Overall GAO Recommendation

GAO is recommending that OGE and GSA provide additional guidance to federal agencies with regards to clarifying the appropriate use of representative appointments; systematically obtaining relevant information to ensure committees are, and are perceived as, balanced; and adopting some promising practices and measures that would better ensure independence and balance and make the formation and operation of advisory committees more transparent.

General GSA Comments

As addressed in the report, because Federal advisory committees are established to advise executive agencies on significant issues and play an important role in the development of Federal policies, their membership should be perceived as being free from conflicts of interest and be fairly balanced in terms of the points of view represented and the functions to be performed. Prior to issuing any new guidance, to include best practices suggestions, GSA intends to consult specifically with the Office of Government Ethics (OGE), and executive branch departments and agencies generally, as substantial parts of these processes reside in the area of OGE's regulatory and interpretive jurisdiction, or are within the purview of each individual agency's decisionmaking authority with respect to membership selection and appointments. GSA's ongoing partnership with OGE extends both to ensuring that GSA's Governmentwide issuances relating to the Federal Advisory Committee Act (FACA) are consistent with all statutes and regulations for which OGE is responsible, and also to the use of OGE staff in the delivery of the ethics and conflicts of interest portions of GSA's interagency FACA management training.

Additional comments are provided below relating to specific actions that already are underway or planned to address the findings upon which the GAO's recommendations are based. Several of these actions were discussed in general with GAO's staff during the course of its review, to include proposed changes to GSA's shared FACA Database management and reporting system. We expect to complete all necessary actions directly under the purview of GSA and those achieved collaboratively with OGE and other agencies during fiscal year 2005.

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GAO Finding

Additional government-wide guidance could help agencies better ensure the independence and balance of federal advisory committees.

GSA Comments

GSA generally agrees that additional guidance and best practices suggestions relating overall to the Federal advisory committee appointment and membership processes could help agencies to ensure that committees are perceived to be independent and free from conflicts of interest, and that committee membership, as contemplated by FACA, will be fairly balanced.

GAO Finding

Also, to be effective, advisory committees must be, and be perceived as being, fairly balanced in terms of points of view and functions to be performed. However, GSA's guidance on advisory committee management does not address what types of information could be helpful to agencies in assessing the points of view of potential committee members to make decisions about committee balance.

GSA Comments

GSA proposes to provide additional guidance within the format of a comprehensive template describing the various factors for, and illustrating the various components of what, in GSA's opinion, would comprise a plan for fairly balanced membership consistent with FACA. Secretariat staff work on this template was begun during the course of this GAO review, with baseline information already obtained from selected FACA Committee Management Officers (CMOs) on their agencies' current plans.

GAO Finding

Consequently, many agencies do not identify and systematically collect and evaluate information pertinent to determining the points of view of potential committee members, such as previous public positions or statements on matters being reviewed.

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GSA Comments

GSA believes that a collaborative approach, sponsored by the Committee Management Secretariat among CMOs in the form of a focus subgroup under the ambit of GSA's standing Interagency Committee on Federal Advisory Committee Management (IAC), would address this issue best initially. It is the Secretariat's opinion that current practices should be shared first, so that all agencies are aware of what options exist that might improve a given agency's membership selection and appointment process, and what new initiatives are feasible and pertinent to a particular agency, given the existing wide variety of types of advisory committees. This effort is planned for discussion at the next scheduled IAC meeting.

Specific GAO Recommendations for GSA Action Contained in the Draft Report

(The Director of OGE and) the GSA Committee Management Secretariat (should) direct federal agencies to review their representative appointments to federal advisory committees either as the 2-year charters expire or, for those committees with indefinite charters, within one year to determine if the appointments are appropriate, and to reappoint members as special government employees, where appropriate, and direct agency committee management officials to consult with agency ethics officials in making decisions about the type of appointments that should be made for each committee.

GSA Comments

GSA proposes to address this both in consultation with OGE and in the Secretariat's proposed IAC subgroup. We believe this collaboration will best define the specific method and process by which the executive branch may address this procedure most effectively on a Governmentwide basis, consistent with the specific authorities and responsibilities of OGE, GSA, and individual executive agencies. Further, GSA believes, based on its current guidance and from information provided in its interagency training, that a firm basis already exists for enhancing consultations between CMOs and Designated Agency Ethics Officials (DAEOs).

We recommend that GSA (and OGE) revise the training materials for the FACA management course, incorporating the additional OGE guidance as recommended above...

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GSA Comments

GSA agrees in principle, but if any revisions are to be made in the ethics and conflicts of interest portions, GSA would do so following consultation with OGE. Any appropriate revisions would reflect the decisions made by OGE.

We recommend that (OGE and) GSA direct agencies to determine, for each relevant committee, the potential for such other biases and take appropriate steps to ensure their representative members do not have such biases.

GSA Comments

GSA believes that addressing this recommendation initially is principally within the purview of OGE, and intends to consult further with OGE accordingly.

We recommend that GSA provide guidance to agencies regarding what background information might be relevant in assessing committee members' points of view.

GSA Comments

GSA intends to provide additional guidance in several ways.

- (1) GSA will coordinate with OGE staff that delivers the ethics and conflicts of interest portions of GSA's interagency FACA management training course. The appropriate content revisions will be made pursuant to OGE's decisions with respect to the recommendations contained in the final version of this GAO report that relate to the subject matter of the course under OGE's regulatory and interpretive jurisdiction. We also expect to obtain with OGE, the necessary input of the affected executive branch agencies under whose purview rests decisionmaking authority for individual membership selection and appointments.
- (2) GSA intends to issue, as an adjunct to its formal guidelines on Federal advisory committee management, at 41 CFR Part 102-3, a suggested best practice guideline in the form of a comprehensive template describing the various factors for, and illustrating the various components of what, in GSA's opinion, would comprise a plan for fairly balanced membership consistent with FACA. Such template likely will include all suggested and recommended factors deriving from the experience of executive agencies, to include agency program needs, the technical qualifications and expertise of individuals, stakeholder, organizational, and interested party viewpoints, congressional and public concerns,

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demographic and diversity factors as appropriate, and others. Such template would be used by agencies to address the fair balance requirement in FACA for an advisory committee's membership that is under the discretion of an agency and not otherwise determined by statute or Presidential directive.

- (3) GSA, through its Committee Management Secretariat staff, intends to review and discuss with selected individual CMOs, their respective agency practices in the areas of membership identification, solicitation, nomination, and selection, and how their agencies interact in this process with both specific stakeholders and the public at large. Best practices will be shared within the FACA management community through the IAC, which is comprised of all executive agency CMOs.

We recommend that GSA issue guidance that agencies should identify the committee (membership) formation process for each committee...; state in the appointment letters to committee members whether they are appointed as special government employees (SGEs) or representatives (and the latter's organizations)...; identify each member's appointment category in the GSA FACA Database...; (and) state in the committee products the nature of the advice provided (independent or consensus)...

GSA Comments

GSA believes that addressing these several discreet recommendations initially will require further consultation on its part with OGE and the affected executive agencies, and will so do accordingly. GSA does propose at this time to modify its shared FACA Database management and reporting system by the addition of a single field to the Members Table to identify each member's current appointment category (SGE or Representative Member). Also, the system has the capability of incorporating additional membership specificity and appointment information with certain fields and displays, and additional linkages to information posted by individual agencies on the Internet. Furthermore, the Committee Management Secretariat will review its current on-line consultation process for the establishment of new discretionary Federal advisory committees to determine what enhancements may be made to the ability of CMOs to upload certain information to the FACA Database contemporaneously for public view.

Comments from the Office of Government Ethics

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



March 17, 2004

Robin M. Nazzaro
Director
Natural Resources and Environment
United States General Accounting Office
Washington, DC 20548

Dear Ms. Nazzaro:

Thank you for the opportunity to comment on the General Accounting Office (GAO) proposed report, Federal Advisory Committees: Additional Guidance Could Help Agencies Better Ensure Independence and Balance (GAO-04-328). The Office of Government Ethics (OGE) shares the concern expressed in the report that members of Federal advisory committees follow all applicable ethical requirements under Federal law. We therefore welcome the contribution made by the proposed report to efforts that OGE is making in this area.

As you know, OGE recently undertook its own "single-issue review" of Federal advisory committee management, which was completed in November 2002. Based on information gathered in that review, we agree with the conclusion of the proposed report that officials in some agencies may be misidentifying certain advisory committee members as "representatives," as opposed to special Government employees (SGEs). OGE believes that it is crucial that agencies correctly apply the criteria for distinguishing between SGEs, who are generally subject to financial disclosure and other ethical requirements applicable to Federal employees, and representatives, who are not Federal employees at all and therefore are not subject to Federal ethics requirements. As described in more detail in section B below, OGE has already undertaken a number of measures to address this issue, such as training, legal guidance, and new guidelines for OGE reviews of agency ethics programs. In addition, OGE has and continues to work with the General Services Administration (GSA) in close coordination and partnership on a variety of matters that concern Federal advisory committees.

OGE does not agree, however, with GAO's conclusion that the problems identified in the proposed report are attributable to inadequacies in the legal guidance provided by OGE with respect to the distinction between SGEs and representatives. As we explain in

United States Office of Government Ethics • 1201 New York Avenue, NW., Suite 500, Washington, DC 20005-3917

See comment 1.

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See comment 1.

section A below, OGE's guidance accurately represents a longstanding executive branch interpretation of the definition of SGE in 18 U.S.C. § 202. Moreover, with respect to GAO's three specific recommendations, OGE does not believe that the proposed report fully describes OGE's guidance or the reasonable inferences that agency officials can fairly draw from this guidance. Indeed, the proposed report itself contains suggestions that the problems experienced at some agencies may be attributable to factors other than a misunderstanding of OGE's guidance.

A. GAO Recommendations Regarding the Adequacy of OGE Guidance

See comment 2.

At the outset, it is important to emphasize that most of the statements in OGE Informal Advisory Opinion 82 x 22 to which GAO takes exception did not originate in the OGE memorandum itself. Rather, as 82 x 22 makes clear, the basic criteria for distinguishing between SGEs and representatives are reproduced verbatim from a memorandum issued by President Kennedy in 1963, shortly after enactment of the legislation creating the SGE category. This Presidential memorandum, which was drafted by the Office of Legal Counsel at the Department of Justice, has long been accorded great weight "as a contemporaneous interpretation of the conflict of interest laws by the Department charged with construing them." 2 Op. O.L.C. 151, 155 n.3 (1978). For over 40 years, the criteria derived from this memorandum have provided guidance to the executive branch in the interpretation of the definition of SGE, and any recommendation to alter the content of that advice bears a significant burden of persuasion, which we do not think is met by the proposed report.

1. Recognizable Group of Persons

GAO's first objection is that the language of the guidance is "overly broad" in indicating that an individual may be considered a representative, as opposed to an SGE, if the individual speaks for a "recognizable group of persons." The proposed report concludes that this language has led some agency officials to believe that this language permits the appointment of non-SGEs "to represent various technical fields, such as biology and toxicology."

See comment 3.

We do not believe that any reasonable interpretation of the phrase "recognizable group of persons" would include "field of expertise." It is simply not logical to say that a field or area of expertise is a "group of persons." Moreover, any such interpretation would require taking a single phrase out of a larger textual context that makes abundantly clear that the thrust is that

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representatives are appointed to speak in a representative capacity for organizations and groups that have a stake in a matter.¹ There is little evidence in the proposed report that any agencies who may have incorrectly appointed experts as representatives did so on the basis of a legitimate interpretation of a particular phrase in 82 x 22. Indeed, the proposed report itself contains evidence that some agencies may not be engaging at all in the analysis described in 82 x 22. The proposed report states that the agencies appointed members as representatives based on longstanding practice and agency culture, without any policies identifying criteria for distinguishing between representatives and SGEs. It is hard therefore to understand how such practices themselves are derived from a misunderstanding or misapplication of the criteria. Furthermore, the report specifically indicated that a recent OGE report on the same subject expressed concern that certain agencies "may be purposely designating their committee members as representatives to avoid subjecting them to the financial disclosure statements required for special government employees." This suggests a possible basis for improper designations other than misunderstanding of the criteria described in 82 x 22.

2. Ambiguity of "Represent" and its Cognate Forms

The proposed report also states that 82 x 22 "implies that when the term 'representative' is used in authorizing legislation, or other such documents, that members should be classified as representatives, despite the fact that this term may be used for more generic purposes, such as to direct the balance of a committee." The proposed report states that, contrary to this purported implication in the OGE guidance, "the use of some form of the terms represent or representative in these documents does not always clearly indicate that the members are to be appointed to serve as representatives."

OGE's guidance does not imply that any use of the word "represent" or its cognate forms in a statute or other document means that the members of the committee are not SGEs. To the contrary, 82 x 22 provides specific examples of documents using such terms and concludes that the given committees nevertheless are comprised of SGEs. The OGE guidance discusses one particular committee document that used the term "represent" in a generic sense to describe the required technical expertise for membership,

¹GAO itself has relied on the same phrase, without apparent misunderstanding. See Decision of the Comptroller General, B-192734 (1978).

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and OGE expressly concluded that the members of this committee were to be treated as SGEs, "[w]hatever the degree of contradiction produced by the use of 'represent'" (BRAC committee). Memorandum 82 x 22 also includes an example of legislation referring to points of view "represented" on a particular committee and nevertheless concludes that this committee was comprised of SGEs (FPUPAC committee). Yet another example in 82 x 22 concerns a statute that made the members of a particular committee "representatives of their practicing colleagues," and OGE still concluded that these members were SGEs (NPSRC committee). Finally, 82 x 22 discusses the language of the Federal Advisory Committee Act (FACA) itself and states that the statutory phrase "points of view represented" in FACA "asserts a standard of fairness but is short of being a command that every advisory committee must consist of individuals who represent the interests of persons or entities outside the Government." Far from implying that the use of "represent" or "representative" automatically rules out SGE status, 82 x 22 makes clear that careful attention to all relevant factors is required in order to determine whether the committee members are actually intended to serve as representatives of interest groups.

3. Effect of Recommendation by Outside Organization

The proposed report takes issue with the statement in 82x 22 that "[t]he fact that an individual is appointed by an agency to an advisory committee upon the recommendation of an outside group or organization tends to support the conclusion that he has a representative function." According to GAO, "this guidance does not take into account a common practice that agencies use to identify potential committee members and overemphasizes the weight agencies may give to this factor when determining what constitutes a representative appointment."

OGE does not understand how the statement that outside recommendation "tends to support" the conclusion of representative status can be taken as "overemphasizing" this factor. Indeed, the intentionally moderate phrase "tends to support" would seem to indicate just the opposite. If this factor were intended to be determinative, the guidance would have said so expressly, as it does in the case of two other factors listed. The outside recommendation factor is just one of several enumerated items that must be considered in light of the totality of the circumstances, and we believe nothing in 82 x 22 fairly suggests otherwise.

In sum, while OGE may agree that some agencies are not adequately performing the analysis required by 82 x 22, we do not believe that any such problems reasonably can be attributed to the

See comment 5.

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See comment 6.

language used in 82 x 22 and the other official documents that have contained the same criteria ever since the 1962 SGE legislation was first implemented. As discussed below, we agree that measures may be undertaken -- and indeed some already have been undertaken -- to address this matter. We do not believe, however, that the measures should include interference with a set of criteria that represent a contemporaneous construction of a criminal statute that has guided the executive branch for over four decades.

B. OGE Efforts to Address the Issue

See comment 7.

OGE has devoted considerable attention to educating ethics officials and other individuals involved in FACA management on issues related to special Government employees (SGEs) and representatives. While some of OGE's continuing efforts in this area involve collaborative efforts with GSA, OGE has pursued other initiatives to strengthen ethics awareness about this important issue. What follows is a short description of some of OGE's training, awareness, and auditing efforts:

1. Improved OGE Program Audit Guidelines

See comment 8.

As the proposed report notes, OGE formally issued new audit guidelines in 2003 that provided for additional focus and review of advisory committee appointment designations. In particular, these guidelines were immediately implemented and provided for additional focus and inquiry by OGE's agency program reviewers on whether individuals who serve as members of committees, councils, boards, commissions, or other groups were properly being designated as SGEs or representatives. After these guidelines were implemented, at least one of our program reviews in 2003 included a specific recommendation that the agency reassess the status of employees and members serving on one of its advisory committees.

2. Continuing GSA Support and Coordination:

See comment 9.

In September 2003, OGE submitted substantial comments on a proposed GSA template for improving the process of establishing Federal advisory committees in the executive branch. This proposed template, to be provided to executive branch agencies and other offices involved in the formation of advisory committees contained suggested language for legislation creating advisory committees. Some of the comments that OGE made to the template were specifically focused on handling the preliminary determination of whether an advisory committee member will be serving as an employee or non-employee representative. Once completed, the template will better enable executive branch agencies and other persons or